

LLM/MA IN: LLM International Human Rights Law

STUDENT'S NAME: Malaz Wagialla

SUPERVISORS' NAME: Tara Van Ho

DISSERTATION TITLE

Defending the Freedom of Association and the Right to Work of Human Rights  
Defenders in Sudan

COMMENTS: (PLEASE WRITE BELOW YOUR COMMENTS)

MARK:

SIGNATURE:

DATE:

UNIVERSITY OF ESSEX

SCHOOL OF LAW

LLM/International Human Rights Law

2018-2019

Supervisor:  
Tara Van Ho

DISSERTATION

(Defending the Freedom of Association and the Right to Work of Human Rights  
Defenders in Sudan)

Name: Malaz Wagialla  
Registration Number (optional):  
Number of Words: 17903  
Date Submitted: 10 September 2019

**Table of Contents:**

<b>Introduction</b>	4-7
<b>Chapter One:</b> Sudan and the Protection of Human Rights Defenders	8-20
<b>Chapter Two:</b> International and Regional Protection of HRDs	21-36
<b>Chapter Three:</b> Application, Analysis, and Recommendations	37-48
<b>Conclusion</b>	49-50

## Introduction:

Human rights defenders (HRDs) usually face many difficulties and challenging situations around the world, from Amazonian women defending environmental rights to Saudi HRDs facing prolonged unlawful detention for standing to ensure respect to women rights, to Kenyan legal aid advocates killed for their efforts to protect and help others. Needless to mention of course, the increased international violations of HRDs freedom of expression and freedom of association.

The United Nation General Assembly consensus adoption of the Declaration on the Right and Responsibility of Individuals, Groups, and Organs of Society to Promote and Protect Universally Recognized Human Rights and Fundamental Freedoms<sup>1</sup> (Declaration on Human Rights Defenders) came as a call to address such violations and to uphold states to their international obligations.

Firstly before addressing the matters which this paper aims to discuss, let us start by defining who a human right defender is? Although the Declaration on Human Rights Defenders does not use the term “human right defender”, however, the definition is derived from Article 1 which states,

*“Everyone has the right, individually and in association with others, to promote and to strive for the protection and realisation of human rights and fundamental freedoms at the national and international levels<sup>2</sup>”*

This term is usually used to describe a wide range of individuals and associations working to promote or protect human rights and fundamental freedoms<sup>3</sup>. Such categories includes lawyers, journalists, activists, trade unionists, members of community-based organisations, people in social movements and staff of human rights organisations involved in different work in very different contexts<sup>4</sup>, in general the term HRDs tends to be invoked when those engaged in rights-related work are threatened or put at risk for what they do<sup>5</sup>.

As stated by Michael H Posner and Candy Whittome, the nature of the work of HRDs and human rights NGOs in the promotion and protection of human rights and fundamental freedoms often bringing them

---

<sup>1</sup> UN General Assembly, Declaration on the Right and Responsibility of Individuals, Groups and Organs of Society to Promote and Protect Universally Recognized Human Rights and Fundamental Freedoms : resolution / adopted by the General Assembly, 8 March 1999, A/RES/53/144, available at: <https://www.refworld.org/docid/3b00f54c14.html>, accessed 23 August 2019.

<sup>2</sup> Ibid, Article 1.

<sup>3</sup> Karen Bennett, Danna Ingleton, Alice M. Nah & James Savage (2015) Critical perspectives on the security and protection of human rights defenders, *The International Journal of Human Rights*, p888, 19:7, 883-895, DOI: 10.1080/13642987.2015.1075301.

<sup>4</sup> Ibid.

<sup>5</sup> Ibid.

into conflict with their governments<sup>6</sup>. Such conflict usually making the government wanting to limit or even prevent their work and activities<sup>7</sup>. Governments generally restrict the work of HRDs and human rights NGOs by imposing restrictions on their freedom of association, registration, and access to fund. In doing that governments use many methods which include passing or planning to pass restrictive laws targeting the freedom of association of HRDs and NGOs and put huge limitations on accessing to fund by them, all these regulation severely harm the HRDs ability to carry out their work in their countries or around the world.

Jacqueline Van De Velde describes the aims of such restrictive methods as to silence and brings under state control HRDs and NGOs<sup>8</sup>, according to him states also has another purpose of preventing NGOs from challenging state authority through legislative tools<sup>9</sup>. It serves as a new form of oppression by authoritarian governments and a means of restricting citizens' exercise of their human rights and fundamental freedoms<sup>10</sup>.

In 2012 Russia bolstered the approach of imposing restrictive regulation, it was among the first states to introduce such regulations, by imposing a federal law that tackling and restricting NGOs ability to access to the foreign fund<sup>11</sup>. Kenneth Roth highlighted the harmful effects of such laws on the HRDs work; he stated human rights NGOs and other association working to ensure and promote governmental accountability had faced the burdensome of such regulation<sup>12</sup>. According to him in Russia under this law human rights NGOs were subjected to close oversight, selectively imposed audits and inspections, and the threat of closure for failing to comply<sup>13</sup>.

The Russian lead in this field followed by many countries including Azerbaijan, Mexico, Pakistan, Uzbekistan, and Hungary, all of them imposed similar regulations<sup>14</sup>; the African region is not separated from such movement. The Horn of African Civil Society Form report<sup>15</sup> noted that many countries in the

---

<sup>6</sup> Michael H Posner and Candy Whittome, *The Status of Human Rights NGOs* (1994), p272, 25 COLUM HUM RTS L REV 269.

<sup>7</sup> *Ibid*, p273.

<sup>8</sup> Jacqueline Van De Velde, *The Foreign Agent Problem: an International Legal Solution to Domestic Restrictions on Non-Governmental Organizations* (2018), p 691, 40 CARDOZO L. REV. 687, 748.

<sup>9</sup> *Ibid*.

<sup>10</sup> *Ibid*.

<sup>11</sup> *Ibid*, P692.

<sup>12</sup> Kenneth Roth, *The Abusers' Reaction: Intensifying Attacks on Human Rights Defenders, Organizations, and Institutions*, (2010), 16 BROWN J. WORLD AFF. 15, p 19.

<sup>13</sup> *Ibid*.

<sup>14</sup> Jacqueline Van De Velde, p 692.

<sup>15</sup> Joint report by the Horn of Africa Civil Society Organizations, PAX and Al Khatim Adlan Center for Enlightenment and Human Development under the title *Shrinking Civil Society Space in the Horn of Africa*, available at: <http://www.kacesudan.org/en/shrinking-civil-society-space-in-the-horn-of-africa/>, accessed 23 August 2019.

area -including Sudan- had or going through the process of enacting laws and regulations limits the HRDs freedom of association<sup>16</sup>. By adopting such regulations which create challenging barriers to the enjoyment of freedom of association had resulted in high restrictions on NGOs formation, registration, operation and access to fund<sup>17</sup>.

The restriction imposed on freedom of association and right to work of HRDs is a challenging issue for HRDs and NGOs carrying out work and activities in Sudan. This essay shall address the question of to what extent does Sudan recognise and protect the freedom of association and the right to work of HRDs? The paper shall discuss this matter in light of the laws and regulations that restrict HRDs and NGOs registration and the issues related to access to the fund.

The main aim of this paper is to fill the Knowledge gap in this subject, although Sudan was among the first states to impose and enact restrictive laws targeting and violating HRDs freedom of association and right to work, however, there is lack in the academic materials addressing or analyzing the Sudanese legislations or their effect in this regard. The author hopes that this paper shall help the readers to have a more in-depth understanding of the HRDs situations in Sudan and the impact of the restriction imposed by the domestic laws on their work and existence.

The essay shall be divided into three main chapters. The first chapter shall reflect the situation of HRDs in Sudan; the chapter shall provide a brief background about Sudan and its constitution and domestic laws, the chapter shall give some examples of human rights violations which HRDs often face. The second chapter shall focus on the international and regional framework and address the protection and limitations of the freedom of association and the HRDs work, as stated in international and regional human rights treaties. The last chapter shall critically discuss and examine the freedom of association and the HRDs right to work in Sudan through a human rights lens, the chapter shall discuss Sudan human rights obligations and whether or not Sudan is meeting those obligations.

The paper shall argue that Sudan, by imposing such harsh restrictive regulations does not recognise nor protect the freedom of association of HRDs or their right to work. The paper shall also provide a few recommendations for the government of Sudan and NGOs about what could be done to meet Sudan international legal obligations in HRDs protection.

---

<sup>16</sup> Shrinking Civil Society Space in the Horn of Africa, Horn of Africa Civil Society Organizations, PAX and Al Khatim Adlan Center for Enlightenment and Human Development, p 13, August 2017, available at: <http://www.kacesudan.org/en/shrinking-civil-society-space-in-the-horn-of-africa/>, accessed 23 August 2019.

<sup>17</sup> Ibid.

The data contained in this essay came mainly from secondary sources, including international and regional covenants, conventions, national laws, policies, printed textbooks, academic articles, cases, communications, and media sources. The author faced shortage on the written materials about this subject, especially the part about Sudan as the reader may notice the Sudan part depends heavily on the international NGOs and regional networks reports such as Amnesty International, Human Rights Watch and the African Center for Justice and Peace Studies. For this, the author hopes this paper shall help in adding and increasing the knowledge and awareness of the HRDs situation in Sudan.

## **Chapter one**

### **Sudan and the Protection of Human Rights Defenders Freedom of Association and Right to work**

#### **Setting out the problem:**

This chapter shall address the issue of the protection of Sudanese HRDs, their right to freedom of association and their right to work and existence; the chapter shall explore whether or not Sudan provides HRDs with any protection under its national laws and legislations. In doing that, the first part of this chapter shall give the reader a general background of Sudan, its geographical location, population, political and economic situation and the historical development of its legislative system. The second part of this chapter shall highlight the different challenges facing different groups of HRDs from different categories. The third part shall address the current situation of HRDs and their NGOs and CSOs<sup>18</sup> by examining whether or not Sudan is offering any kind of protection under its laws and policies to HRDs right to work and freedom of association. The third section shall mainly focus on two aspects, the government attacks on NGOs and CSOs, especially in matters related to registration, cancellation and shutdown and restrictions imposed on access to funding. Moreover, this part shall also draw the reader attention to the attacks carried by the Sudanese government against HRDs especially after the issuance of the arrest warrant against the former president Omer El-Bashir by the International Criminal Court (ICC).

#### **Brief background about Sudan:**

Sudan is a country located in Northeast Africa, with a total area of 1.886.068 Square kilometre<sup>19</sup>, in 2019 its population estimated at 42.81 million, a significant increase from the 34,847,910 estimated in 2013<sup>20</sup>. Sudan composed of over 500 tribes the majority of them are of Arabic ethnicity (about 70% of Sudanese population), and the rest are of Beja, Copts and Nubian ethnics<sup>21</sup>, the majority of Sudanese are Muslims, and the rest of them follows Christianity or indigenous beliefs<sup>22</sup>. The official languages are Arabic and English<sup>23</sup>.

---

<sup>18</sup> The terms NGOs and CSOs shall be used interchangeable in this easy.

<sup>19</sup>Sudan population, World Population Review 2019, available at: <http://worldpopulationreview.com/countries/sudan-population/>, accessed 3 August 2019.

<sup>20</sup> Ibid.

<sup>21</sup> Ibid.

<sup>22</sup> Ibid.

<sup>23</sup> Ibid.



Even before its official independence from the United Kingdom Sudan have suffered from armed conflicts and civil wars especially at southern parts<sup>24</sup>, which resulted in the separation of the south and the formation of the newly independent country of South Sudan on July 2011<sup>25</sup>. Sudan economic suffered after the secession of South Sudan which reflected clearly on the devaluation of the Sudanese pound and led to the high inflation rates<sup>26</sup>; this was one of the main reasons of the recent Sudanese revolution break out in December 2018<sup>27</sup>.

Sudan was following the common law system, most of its previous laws were influenced by the British and Indian laws<sup>28</sup>, however, since 1983 Sudan went through Islamization process, on that date Sharia laws introduced in the country<sup>29</sup>, Sudanese laws have been amended to conform to Islamic norms, currently the legal system of Sudan is based on Sharia law<sup>30</sup>.

The current political situation in Sudan is not clear and kind of chaos. A public revolution succeeded in overthrowing Sudanese dictator Omer Al-Bashir who is wanted by the ICC for war crimes and crimes against humanity<sup>31</sup> after he remained in power for over 30 years. A Transitional Military Council (TMC) take over the control in Sudan; they issued several orders among which is the extension of emergency declaration, the suspension of the constitution<sup>32</sup> and the dissolution of trade unions and professional association before reversed this decision later<sup>33</sup>. Under the African Union (AU) umbrella the TMC started negotiations with the political parties, civil society groups and trade unions which allied together under the name Freedom and Change Forces (FCF) who demanded an immediate handover of the power to a civilian government. The negotiations did not go well and resulted in a massacre in Khartoum the capital, which led the AU to interfere and suspend the Sudan membership and threaten to take

---

<sup>24</sup> Conrad John Masabo, Discerning for Peace in Africa: The Sudan Civil Wars and Peace Processes 1955-2013, peace studies and international relations, Hekima Review, No. 49, December 2013, P139, available at: <http://journals.hekima.ac.ke/index.php/ojs/article/view/859>, accessed 15 August 2019.

<sup>25</sup> South Sudan population, World Population Review 2019, available at: <http://worldpopulationreview.com/countries/south-sudan-population/>, accessed 3 August 2019.

<sup>26</sup> Sudan population, supra1.

<sup>27</sup> See BBC News, available at: <https://www.bbc.co.uk/news/world-africa-47852496>.

<sup>28</sup> Amin M Medani, Criminal Law and Justice in Sudan, (2010), P3.

<sup>29</sup> Ibid, P4.

<sup>30</sup> Ibid, P5.

<sup>31</sup> Göran Sluiter, Using the Genocide Convention to Strengthen Cooperation with the ICC in the Al Bashir Case, Journal of International Criminal Justice, Volume 8, Issue 2, May 2010, P366. Also see International Criminal Court, The Prosecutor v Omar Hassan Ahmed Al Bashir, <https://www.icc-cpi.int/darfur/albashir/pages/alleged-crimes.aspx>.

<sup>32</sup> See BBC News, available at: <https://www.bbc.co.uk/news/world-africa-49213901>.

<sup>33</sup> See: <https://www.africanstand.com/news/africa/east-africa/sudan-military-commission-reactivates-trade-unions/>, accessed 15 August 2019.

further action if power not transferred to civilian authority<sup>34</sup>. Recently the two parties TMC and FCF reach an agreement to share powers in a transitional government for three years<sup>35</sup>.

The abovementioned background is to highlight the legal, economic and political situations that the Sudanese HRDs are working under, the past political regime and the recent changes harshen their already difficult working situation even more, and double the challenges that they are facing to carry out their work in Sudan.

### **Sudanese National legislations and HRDs Protection:**

While the issue of HRDs protection is gaining an increased international concern, many states had adopted national policies and programs in this regard<sup>36</sup> Sudan still lack any piece of legislation or domestic policy dedicated to the protection of HRDs. However, since the Sudanese Interim Constitution (Constitution) came into force in 2005<sup>37</sup>, Sudan amended and issued many laws which contained provisions intended to provide some protection for human rights and fundamental freedoms, such regulations could be used to extend some protection to HRDs, their freedom of association and right to work. The following paragraphs shall provide a summary for these laws and legislations.

### **HRDs Protection under Sudanese Constitution:**

Following the signature of the Comprehensive Peace Agreement (CPA) between the Sudanese government and the Sudan People's Liberation Army (SPLA), a new constitution introduced in 2005, for the first time the Constitution contained a "Bill of Rights" (Bill)<sup>38</sup>. According to the Bill, Sudan is committed to respect and promote all human rights and fundamental freedoms provided for under international treaties ratified by Sudan, this is reflected clearly under Article 27, which states:

*"All rights and freedoms enriched in international human rights treaties, covenants and instruments ratified by the Republic of Sudan shall be an integral part of this Bill"*<sup>39</sup>.

Article 27 also adds the rights and freedoms provided for in this Bill shall not detract or derogated from by any other legislation<sup>40</sup>; such provision made it clear that any ratified international treaty shall acquire

---

<sup>34</sup> BBC News, available at: <https://www.bbc.co.uk/news/world-africa-48545543>.

<sup>35</sup> BBC News, available at: [https://www.bbc.co.uk/news/world-africa-49213901?intlink\\_from\\_url=https://www.bbc.co.uk/news/topics/cq23pdgvgm8t/sudan&link\\_location=live-reporting-story](https://www.bbc.co.uk/news/world-africa-49213901?intlink_from_url=https://www.bbc.co.uk/news/topics/cq23pdgvgm8t/sudan&link_location=live-reporting-story).

<sup>36</sup> See for example Sandra Carvalho; Alice de Marchi Pereira de Souza; Rafael Mendonca Dias, Protection Policies for Human Rights Defenders, 23 SUR - INT'L J. ON HUM RTS. 175 (2016). & Karen Bennett (2015) European Union Guidelines on Human Rights Defenders: a review of policy and practice towards effective implementation, The International Journal of Human Rights, 19:7, 908-934, DOI: 10.1080/13642987.2015.1075303.

<sup>37</sup> Sudan Interim Constitution, 2005, available at: [moj.gov.sd/files/download/63](http://moj.gov.sd/files/download/63), accessed 15 August 2019.

<sup>38</sup> Ibid, chapter 2.

<sup>39</sup> Ibid, Article 27 (3).

<sup>40</sup> Ibid, Article 27 (4).

a powerful position in protecting the people of Sudan in the practice and enjoyment of their rights and freedoms.

The Bill is composed of a set of provisions which grantee and protect number of human rights and fundamental freedoms such as the right to life<sup>41</sup>, right to equality before law<sup>42</sup>, right to fair trial<sup>43</sup>, right to freedom of expression and media<sup>44</sup>, freedom of assembly and association<sup>45</sup>, and the sanctity of the rights and freedoms<sup>46</sup>. The Constitution states that derogation from the rights enshrined in it is only acceptable in case of the state of emergency<sup>47</sup>.

In addition to the Constitution, Sudan also have many national legislations that address the issues of respecting and protecting human rights and fundamental freedoms and implicitly extend some protection to HRDs and their work. The following paragraphs shall give a brief introduction to these laws.

#### **HRDs Protection under Sudanese National Legislation:**

In 2006 Sudan issued Regulating the Voluntary and Humanitarian Work Act (Humanitarian Work Act)<sup>48</sup>, which regulates the existence, registration, cancellation and activities of the NGOs and HRDs associations in the country. The Humanitarian Work Act provisions also deal with the procedurals matters and set out the norms that NGOs and HRDs associations and networks should consider while conducting their work in providing, protection and promotion human rights in Sudan<sup>49</sup>.

The Humanitarian Work Act also established the Humanitarian Aid Commission (HAC), the government regulatory agency<sup>50</sup> which monitors the compliance of the NGOs with the regulations and handled the procedurals matters such as registrations, renewal of registration, and approval of access to fund among other aspects<sup>51</sup>.

NGOs also could be registered under the Companies Ordinance 2015, which allowed for the existence of the non-profitable companies or as it called under the Ordinance "limited by grantee"<sup>52</sup>. Often HRDs

---

<sup>41</sup> Ibid, Article 28.

<sup>42</sup> Ibid, Article 31.

<sup>43</sup> Ibid, Article 34.

<sup>44</sup> Ibid, Article 39.

<sup>45</sup> Ibid, Article 40.

<sup>46</sup> Ibid, Article 48.

<sup>47</sup> Ibid, Articles 42& 211.

<sup>48</sup> Regulating the Voluntary and Humanitarian Work Act 2006, available at: <http://moj.gov.sd/sudanlaws/#/reader>, accessed 15 August 2019.

<sup>49</sup> Ibid, Article 6.

<sup>50</sup> Ibid, Article 18.

<sup>51</sup> Ibid, Article 19.

<sup>52</sup> Companies Act 2015, available at: <http://moj.gov.sd/sudanlaws/#/reader/chapter/354>, accessed 10 September 2019.

prefer to register their NGOs under this type of companies to avoid HAC interference in their activities, however, even under this kind of companies the authorities also manage to interfere through the Ministry of Justice and order the immediate liquidation of such NGOs, similarly as what happened with Salmmah Center as will be discussed in the following section.

In addition to that, in 2009 Sudan enacted the National Commission of Human Rights Act (Human Rights Commission Act)<sup>53</sup>, by which a Sudanese Human Rights Commission (the Commission) was created as an independent body to protect and promote human rights in Sudan<sup>54</sup>. The Commission has the authority to monitor the implementation of international and regional human rights treaties<sup>55</sup>. The Commission also has the jurisdiction to receive complaints from individuals, NGOs and other bodies regarding the human rights violations<sup>56</sup>; it also can address the competent authorities regarding human rights violations committed by the government personnel and ask these authorities to refrain immediately from such acts<sup>57</sup>.

Regarding the protection and promotion of freedom of expression, press and publication Sudan have issued the Press and Publication Act 2009 (the Press Act)<sup>58</sup>. Article 5 of the Press Act titled “Basic Principles” states on the freedom and independence of the press and forbid any restriction on such freedom unless provided under the Constitution and the Press Act<sup>59</sup>, Article 5 also prohibit the confiscations or closure of any newspaper without due process of law<sup>60</sup>.

Other than the general protection offered under the national legislation in Sudan for human rights and fundamental freedoms, we can notice the absence of the protection provided for HRDs especially concerning their right to freedom of association and their right to work and existence.

Despite the good drafting of all of the abovementioned laws and regulations and theoretically they should provide some protection to HRDs work, however, the practice is different, the situation is very different as these same laws, and other legislation as will be discussed later are being used to harass and criminalise the work of HRDs.

---

<sup>53</sup>National Commission on Human Rights Act 2009, available at: <http://moj.gov.sd/sudanlaws/#/reader/chapter/300>, accessed 15 August 2019.

<sup>54</sup> Ibid, Article 5.

<sup>55</sup> Ibid, Article 9 (1).

<sup>56</sup> Ibid, Article 9 (2) (h).

<sup>57</sup> Ibid, Article 9 (2) (l).

<sup>58</sup> Press and Publication Act 2009, available at: <http://moj.gov.sd/sudanlaws/#/reader/chapter/305>, accessed 15 August 2019.

<sup>59</sup> Ibid, Article 5.

<sup>60</sup> Ibid.

The following paragraphs shall focus on the challenges that NGOs, HRDs and their associations and NGOs facing in Sudan.

### **HRDs in Sudan Challenges and Violations:**

Sudan has a long record in violating the rights and freedoms of the HRDs working in the country; they face different kinds of abuses such as unlawful detention, harassment, sexual assaults, torture, and even extrajudicial killing<sup>61</sup>. During the last regime, an apparent hostility was express against HRDs<sup>62</sup>, restriction of the freedom of expression and freedom of assembly and association, confiscation of newspapers, restrictions on access to fund and shutting down of NGOs and CSOs<sup>63</sup> is also under the list of violations which HRDs suffers.

The following paragraphs shall address the challenges and violations which the different categories of the HRDs facing.

### **Journalists:**

Limits and restrictions also are being placed by the authorities on the media and press. HRDs and journalist in Sudan suffer from authorities and National Intelligence Security Services (NISS) attacks against their freedom of association, freedom of expression and right to work. Generally, the NISS uses its powers to control the content of the media and press in the country<sup>64</sup>, as they have the power of the pre-print censorship of the newspapers<sup>65</sup>. Amnesty International reported that the Sudanese authorities' confiscated print-runs owned by six newspapers in more than 20 occasions<sup>66</sup>. Human Rights Watch also reported 66 newspapers confiscations incidents occurred between 2014-2015<sup>67</sup>, up to date there is no accurate statistics about the total number of the confiscated newspapers, however, many of these incidents well documented by the work of International Organizations such as Human Rights Watch<sup>68</sup>. Sudanese HRDs journalists usually faced criminal charges and trials because of their activities and work and as a result of what they write and published especially on issues considered by the NISS as

---

<sup>61</sup> Human Rights Watch, 'Sudan events of 2016' (*World Report 2017*, January 2017) <<https://www.hrw.org/world-report/2017/country-chapters/sudan#1b543f>> accessed 4 August 2019.

<sup>62</sup> Frontline Defenders, <https://www.frontlinedefenders.org/en/location/sudan>, accessed 4 August 2019.

<sup>63</sup> Human Rights Watch, 'Good Girls Don't Protest' Repression and Abuse of Women Human Rights Defenders, Activists, and Protesters in Sudan, March 2016, <https://www.hrw.org/report/2016/03/23/good-girls-dont-protest/repression-and-abuse-women-human-rights-defenders>, accessed 4 August 2019.

<sup>64</sup> Human Rights Watch, "It's an Everyday Battle" Censorship and Harassment of Journalist and Human Rights Defenders in Sudan, February 2009, P2, <https://www.hrw.org/report/2009/02/18/its-everyday-battle/censorship-and-harassment-journalists-and-human-rights>, accessed 4 August 2019.

<sup>65</sup> Ibid.

<sup>66</sup> Amnesty International, Sudan Report 2017/2018, <https://www.amnesty.org/en/countries/africa/sudan/report-sudan/>, accessed 4 August 2019.

<sup>67</sup> Human Rights Watch, Good Girls Don't Protest, P13.

<sup>68</sup> Human Rights Watch, It's an Everyday Battle, P15.

a threat to national security<sup>69</sup>. For example the HRD and journalist Madiha Abdala, former editor of Al-Midan newspaper convicted by the Press and Publication Court in Khartoum of dissemination of false information for writing an article on the conflict in South Kordofan one of the war zones in Sudan<sup>70</sup>.

These actions are not only undermining the freedom of expression and the right to access to information but also violating the right to work of HRDs. NISS used to ban journalists from writing in newspapers if they “crossed the red line” in their articles. In the abovementioned case of Mrs Abdala, she was prohibited by the NISS from writing for one year<sup>71</sup>; such similar banning affects HRDs to work and gain their living. According to the African Center for Justice and Peace Studies (ACJPS) report, this put huge financial pressure not only on them but also at their families<sup>72</sup>. HRDs also are being targeted by the daily prolong summons, in which they have to come to the NISS premises for interrogation. However, they ended up spending the whole day from the early morning till late evening without being investigated with; such summons could continue for months<sup>73</sup>. They also might be compelled to attend court sessions to defend themselves on charges raised by the NISS, attending these court sessions and summons would affect their ability to carry on their works and duties<sup>74</sup>.

#### **Female HRDs:**

Women generally in Sudan face harsh situations; this could be traced mainly to the strict Islamic ideology implemented by the later regime and the introduction of Sharia laws in 1983<sup>75</sup>. The last government adopted and implemented restricted and degrading laws toward women such as the Personal Status Act 1991, and the Public Order Act 1994<sup>76</sup> which added another restriction on women especially in areas as inheritance, movement, travel, and the way they should wear and behave in public<sup>77</sup>. Even after the adoption of the Constitution in 2005 the government is still refusing to amend these laws to conform to the constitutional provisions<sup>78</sup>.

---

<sup>69</sup> Amnesty International, Sudan Report 2017/2018.

<sup>70</sup> Ibid.

<sup>71</sup> African Center for Justice and Peace Studies, Situation of Female Human Rights Defenders in Sudan, February 2018, P14, <https://www.acjps.org/situation-of-female-human-rights-defenders-in-sudan-june-2016-february-2018/>, accessed 4 August 2019.

<sup>72</sup> Ibid, P13.

<sup>73</sup> Ibid.

<sup>74</sup> Ibid, P14.

<sup>75</sup> Ibid, P3.

<sup>76</sup> Ibid.

<sup>77</sup> Human Rights Watch, Good Girls Don't Protest, P15.

<sup>78</sup> ACJPS, Situation of Female Human Rights Defenders in Sudan, P3.

The government have expressed open hostility towards female HRDs, pro-government media described female activists who are against the Public Order Act as “prostitutes”<sup>79</sup>, and as noticed and report by Human Rights Watch there is a strong social stigma on the women who are engaging in the women rights field<sup>80</sup>. Authorities usually tend to assume that women HRDs are joining with political oppositions who works to withdraw the government<sup>81</sup>.

Sudan does not yet ratify the Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW)<sup>82</sup>. Female HRDs reported that they are facing difficulties to work or do advocacy on promoting and calling for joining CEDAW<sup>83</sup>, they also fear being arrested or risking their organisations' shutdown if they work in fields which the government consider as sensitive such as human rights, sexual violence, women's participation and women's rights<sup>84</sup>. In March 2014 the Sudanese authorities prevent Salmmah Center for Women Studies (Khartoum based women's rights centre) from celebrating the Women's Day<sup>85</sup>, three months later in June 2014 the Ministry of Justice issued its order to close the Center without providing any reasons for such order. Unlike the other NGOs and human rights centres Salmmah Center was registered under the Company Act 2015, which allows for the registration of non-profit companies or as they called in Sudan “limited by grantee”, the Ministry of Justice ordered the immediate liquidation of the centre without providing any reasons for such discussion<sup>86</sup>.

The ACJPS stated in its report that in the period from 2016 to 2018, the NISS subjected 30 female HRDs to arbitrary arrest and incommunicado detention for periods of one day up to three months<sup>87</sup>. NISS also uses the prolong summons against women HRDs to cripple their ability to work, as described by ACJPS report the NISS uses this method to limit the daily activities of female HRDs and to put pressure on them and their NGOs<sup>88</sup>.

---

<sup>79</sup> Human Rights Watch, Good Girls Don't Protest, P15.

<sup>80</sup> Ibid.

<sup>81</sup> Ibid, P16.

<sup>82</sup> See [https://tbinternet.ohchr.org/\\_layouts/15/TreatyBodyExternal/Treaty.aspx?CountryID=165&Lang=EN](https://tbinternet.ohchr.org/_layouts/15/TreatyBodyExternal/Treaty.aspx?CountryID=165&Lang=EN)

<sup>83</sup> Human Rights Watch, Good Girls Don't Protest, P16.

<sup>84</sup> Ibid.

<sup>85</sup> Al-Tageer Newspaper, March 2014, available at: <https://www.altaghyeer.info/ar/2014/03/10/%D9%81%D9%87%D9%8A%D9%85%D8%A9-%D9%87%D8%A7%D8%B4%D9%85-%D9%85%D8%AF%D9%8A%D8%B1%D8%A9-%D9%85%D8%B1%D9%83%D8%B2-%D8%B3%D8%A7%D9%84%D9%85%D8%A9%D9%85%D9%86%D8%B9-%D8%A7%D9%84%D8%A7%D8%AD%D8%AA%D9%81/>.

<sup>86</sup> For detailed information see: <https://reliefweb.int/report/sudan/arab-coalition-sudan-condemns-closure-womens-centre>, accessed 15 August 2019.

<sup>87</sup> Situation of Female Human Rights Defenders in Sudan, P9.

<sup>88</sup> Ibid, P16.

In general, the government uses the abovementioned oppressive laws companies with the Criminal Act 1991 to target women HRDs, they usually under the danger of facing unmerited legal trials, arbitrary arrest, travel ban, work suspension, physically abuse and sexual harassment or assault<sup>89</sup>. All of these restrictions and harassments makes it extremely challenging for women HRDs to have and establish a safe and stable environment to carry out their work in protecting and promotion of human rights and fundamental freedoms<sup>90</sup>.

### **HRDs Freedom of Association and Right to Work:**

Targeting HRDs freedom of association and the right to work is one of the main issues that affect those defenders and impact negatively on the quality of work and services that they provide to the community. This following paragraphs shall focus on these violations mainly those concerning NGOs registration and access to fund.

After the military coup in 1989 HRDs and NGOs labelled by the government as “arms of the foreign western countries” how works against Islam and Sudanese community values, the regime used this as a justification for targeting them, criminalize their activities and to frighten other people from communicate with them or engaging in any of their activities. In the 1990s and early 2000s, many of the Sudanese HRDs had to flee the country because their lives were in danger<sup>91</sup>, after the CPA and the introduction of the new Constitution in 2005 many of the HRDs thoughts the government policy toward them would change for the best; however, the opposite happens. In 2009 the ICC issued an arrest warrant against Omer Al-Bashir for the crimes committed in Darfur, since this date the government launched an aggressive campaign against HRDs, international and national NGOs<sup>92</sup>. Sudan expelled more than 13 international groups working in human rights field in the country and shut down many national human rights NGOs and groups<sup>93</sup>.

The Sudanese government uses the NISS and HAC to restrict HRDs activities and work<sup>94</sup>, the authorities used to raided and storm NGOs offices, harass and detain staff members, seized equipment and funds, freeze bank’s accounts, deny NGOs registration and close many of them without giving any reasons and without due process of law<sup>95</sup>.

---

<sup>89</sup> Ibid, P4.

<sup>90</sup> Ibid.

<sup>91</sup> Frontline Defenders, supra 36.

<sup>92</sup> Human Rights Watch, Good Girls Don’t Protest, P14.

<sup>93</sup> Ibid.

<sup>94</sup> Ibid.

<sup>95</sup> Ibid.



The African Commission on human and people's rights (African Commission) had addressed the situation of HRDs in Sudan and the violation they are subject to in a number of its complaints decisions. The issue of violating Sudanese HRDs right to freedom of association and their right to work, especially their right not to be deprived of work unfairly as stated in Economic and Social Council<sup>96</sup>. In the case of *Osman Hummeida and Others v Sudan*<sup>97</sup>. Mr Osman and the other two complainants were HRDs working in three different human rights NGOs in Sudan, they had a close work relationship with each other, and one of them worked for the Khartoum Center for Human Rights and Environmental Development (KCHRED) one of the NGOs shut down by the Sudanese authorities in 2009<sup>98</sup>. The NISS arrested the three complainants due to alleged cooperation with the ICC prosecutor, the three of them were unlawfully detained and beaten at the NISS premises, the three of them had to flee Sudan because they feared of their lives due to the serious nature of allegations against them<sup>99</sup>.

Among the several rights that Mr Amir Suliman –one of the complainants- and his organisation claims the state violated it was Article 10 of the ACHPR the right to freedom of association<sup>100</sup>, in his claim, he stated that the authorities have frozen the organisation bank account and revoke its registration to destabilising the organisation activities<sup>101</sup>. The African Commission in its decision found that any restriction to the right to freedom of association must meet the requirements of Article 27 of the African Charter on Human and People's Rights (ACHPR), any interference which is not proportionate or justified under Article 27 will consider as a violation to this right<sup>102</sup>. According to the African Commission Sudan does not provide any evidence showing that the activities of the complainant or his organisation endanger national security, morality or any of Article 27 limitation requirements<sup>103</sup>, based on that the State interference with the organisation activities was not justified<sup>104</sup>. The African Commission held Sudan liable of violation of Article 10 of the ACHPR<sup>105</sup>.

---

<sup>96</sup> UN Committee on Economic, Social and Cultural Rights (CESCR), General Comment No. 18: The Right to Work (Art. 6 of the Covenant), 6 February 2006, E/C.12/GC/18, available at: <https://www.refworld.org/docid/4415453b4.html>, accessed 21 August 2019.

<sup>97</sup> Monim Elgak, Osman Hummeida and Amir Suliman v Sudan, African Commission on Human and People's Rights, 379/09, available at: [https://www.escri-net.org/sites/default/files/caselaw/achpr15eos\\_decision\\_379\\_09\\_eng\\_0.pdf](https://www.escri-net.org/sites/default/files/caselaw/achpr15eos_decision_379_09_eng_0.pdf), accessed 4 August 2019.

<sup>98</sup> Ibid.

<sup>99</sup> Ibid.

<sup>100</sup> Ibid, Para86.

<sup>101</sup> Ibid.

<sup>102</sup> Ibid, Para118.

<sup>103</sup> Ibid, Para119.

<sup>104</sup> Ibid.

<sup>105</sup> Ibid, Para142.

Moreover, Mr Amir claimed that his right to work had been violated by the acts of the State when they prevented KCHRED from carrying out any work, and this affects his ability to earn a living<sup>106</sup>. Mr Amir advocate cites the previous decision of the African Commission in the communication of the *Institute for Human Rights and Development in African v Angola*<sup>107</sup>. In the latter case, the African Commission agreed that arbitrary arrest, detention and deportation of persons who were lawfully working in the country which results in losing their jobs is a violation to the right to work under the African Charter<sup>108</sup>. In another complaint, the African Commission also addressed the issue of violation of the HRDs freedom of association in the case of *Law Office of Ghazi Suleiman (on behalf of Ghazi Suleiman) v Sudan*, in which the African Commission stated,

*“The fact that Suleiman advocated peaceful means of action and had never caused civil unrest was additional evidence that Sudan’s actions were not proportionate and necessary to the achievement of any legitimate goal. The actions of Sudan not only prevented Suleiman from exercising his human rights but also had a seriously discouraging effect on others who might also have contributed to the promotion and protection of human rights in Sudan*<sup>109</sup>”.

Moreover, the African Commission added

*“The interference with Suleiman’s rights of freedom of expression, association, and assembly could not be justified*<sup>110</sup>”.

Even after the African Commission decision the Sudanese government continued violating the rights of the HRDs, shutting down of NGOs continuous to the date, many of NGOs and human rights institutions have been shut down by the authorities, their assets confiscated, bank account frozen and their staff had been under chase and detention by the authorities.

The following paragraphs shall address the recent restriction facing the HRDs, the challenges and violations related to registration and access to fund and the increasing threats regarding their freedom of association and right to work they face especially after the ICC warrant against the former president El-Bashir.

---

<sup>106</sup> Ibid, Para 89.

<sup>107</sup> Institute for Human Rights and Development in Africa (on behalf of Esmaila Connateh & 13 others) v. Angola, 292/04, African Commission on Human and Peoples' Rights, May 2008, available at: <https://www.refworld.org/cases,ACHPR,51b6fd4e7.html>, accessed 4 August 2019.

<sup>108</sup> Ibid.

<sup>109</sup> Law Office of Ghazi Suleiman (on behalf of Ghazi Suleiman) v Sudan, Merits, African Commission on Human and Peoples' Rights Communication no 228/99, para 65, 33rd Ordinary Session (15-29 May 2003), 16th Annual Activity Report (2002-3), (2003) AHRLR 144 (ACHPR 2003), (2004) 11 IHRR 245, IHRL 2637 (ACHPR 2003), May 2003.

<sup>110</sup> Ibid, para 66.

### **Sudan Violations of Freedom of Association:**

In 2016 NISS officials raided the Khartoum based group Tracks for Training and Human Development<sup>111</sup>, the NGO had later been shut down along with other NGOs by revoking their registration and depriving them from their right to work and existence<sup>112</sup>, the staff members have been under interrogation and on daily bases summons before some of them referred to trail<sup>113</sup>. In 2012 the Sudanese authorities through HAC cancelled the registration of Al Khatim Adlan Center for Enlightenment and Human Development (KACE), Khartoum based independent institution dedicated to promoting a democratic, multicultural and human rights, the authorities removed KACE name from the general record of the voluntary organisation authorised to conduct work in Sudan<sup>114</sup>. Human Rights Watch mentioned in its report “Good Girls Don’t Protest” that since 2009 till 2016 (the report publication date) the Sudanese authorities expelled 13 international groups and shut down three national human rights groups<sup>115</sup>, the number of the closed NGOs and CSOs has definitely increased, however, there is no established record about the actual number.

Since access to fund and especially foreign fund is critical to the Sudanese HRDs and their associations' restriction on this access may impact negatively on their very existence and work and even on their freedom of association. The Humanitarian Work Act ban access to foreign fund without government approval and permission<sup>116</sup>. According to the Act, all grants and funds should be through a project instrument and to be approved by HAC<sup>117</sup>, to receive any fund whether from a foreign source or alien person internally the NGO has to be registered with HAC<sup>118</sup> and obtain the Ministry of Welfare and Social Security approval for such fund<sup>119</sup>. This provision has been used continuously by the state authorities to harass HRDs and NGOs and to control their activities and work.

To conclude the situation facing Sudanese HRDs seems to be very harsh and impact negatively on their ability to carry out their works, the reflected cases and incidents mentioned earlier in this chapter make it clear that such violations are committed under the law and the predators are enjoying full

---

<sup>111</sup> Human Right Watch, Sudan Events of 2015, World Report 2016, available at: <https://www.hrw.org/world-report/2016/country-chapters/sudan>, accessed 4 August 2019.

<sup>112</sup> Ibid.

<sup>113</sup> See <https://sudouk.org/updates/posts/joint-ngo-letter-open-letter-to-un-special-procedure-holders-concerning-tracks-in-sudan/>, accessed 4 August 2019.

<sup>114</sup> See Sudan Tribune newspaper, available at: <http://www.sudantribune.com/spip.php?article45085>, accessed 4 August 2019.

<sup>115</sup> Human Rights Watch, Good Girls Don't Protest, P14.

<sup>116</sup> Humanitarian Work Act, Article 6.

<sup>117</sup> Ibid.

<sup>118</sup> Ibid.

<sup>119</sup> Ibid.

immunity against any accountability. The domestic legislation gives broad discretionary powers and authorities to the State and NISS officials<sup>120</sup>, making them able to violate any human rights and fundamental freedoms.

The next chapter shall introduce and analyse the available tools and instruments under International Human Rights Law (the IHRL) to protect HRDs and their rights and freedoms.

---

<sup>120</sup> National Intelligence Services Act 2010, available at: <http://moj.gov.sd/sudanlaws/#/reader/chapter/308>, accessed 15 August 2019.

## Chapter two:

### International and Regional Protection of HRDs:

The vital role of the HRDs in promoting and protecting the universal human rights and fundamental freedoms have been reflected implicitly and explicitly in many international and regional instruments. The United Nations Charter (Charter) emphasise on the respect and promotion of human rights and fundamental freedoms as one of the main purposes of the UN<sup>121</sup>. The later adoption of the Declaration on Human Rights Defenders came as a recognition of the HRDs role and the challenges and obstacles that they face. The Declaration on Human Rights Defenders is a non-binding instrument adopted by consensus<sup>122</sup>, composed of many universal human rights and fundamental rights enriched in many international and regional legal binding treaties<sup>123</sup>. The Declaration calls on governments all around the world, groups, organs and every individual who can help to join their hands and work together with the HRDs in their efforts to promote and protect international human rights and fundamental freedoms. Regionally, although the ACHPR does not explicitly mention the issue of HRDs protection; however, it provides for the protection of many human rights and fundamental freedoms among them is the freedom of association. In 1999 the Organization of the African Union<sup>124</sup> (AU) adopted the Grand Bay Declaration and Plan of Action<sup>125</sup>, a non-binding legal instrument that calls the member states to take appropriate steps to implement the United Nations Declaration on HRDs in Africa<sup>126</sup>. In 2003 the AU adopted another non-binding Kigali Declaration<sup>127</sup> which stated on the crucial role of the CSOs in general and HRDs in particular in the promotion and protection of human rights in Africa<sup>128</sup>. Kigali Declaration argues member states to protect HRDs and encourage the participation of CSOs in decision-making processes<sup>129</sup>. The African Commission has also adopted many resolutions on the protection and

---

<sup>121</sup> United Nations, Charter of the United Nations, 24 October 1945, 1 UNTS XVI, Art 1(3), available at: <https://www.refworld.org/docid/3ae6b3930.html>, accessed 5 August 2019.

<sup>122</sup> See UN Human Rights office of the High Commissioner, available at: <https://www.ohchr.org/EN/Issues/SRHRDefenders/Pages/Declaration.aspx>, accessed 17 August 2019.

<sup>123</sup> Ibid.

<sup>124</sup> The Organization of African Unity (OAU) or Organization de l'Unité Africaine (OUA) was established on 25 May 1963. It was disbanded on 9 July 2002 by its last chairman, South African Thabo Mbeki and replaced by the African Union.

<sup>125</sup> Grand Bay (Mauritius) Declaration and Plan of Action, OAU Ministerial Conference on Human Rights, April 1999, available at: <https://issafrica.s3.amazonaws.com/site/uploads/GRANDBAIEDECL99.PDF>, accessed 8 August 2019.

<sup>126</sup> Ibid.

<sup>127</sup> Kigali Declaration, AU Ministerial Conference on Human Rights, May 2003, available at: <https://www.achpr.org/legalinstruments/detail?id=39>, accessed 8 August 2019.

<sup>128</sup> Ibid, Para28.

<sup>129</sup> Ibid.

situation of HRDs in Africa<sup>130</sup>. In 2004 the ACHPR created a mandate of the Special Rapporteur on the Protection of Human Rights Defenders in Africa<sup>131</sup>, through this mandate the African Commission examines, reports and acts upon information concerning the situation of defenders in the continent<sup>132</sup>. The following paragraphs shall address the protection available for HRDs internationally and regionally- mainly in Africa-with regard to their freedom of association and the matters of registration and access to fund which are related to their right to work.

### **Freedom of Association and HRDs in International and Regional Framework:**

Although the work of HRDs is much related to all human rights and fundamental freedoms, however, some of them are considered essential to the work and existence of HRDs, they cannot function well in the absence or extreme restrictions of such rights and freedoms. One of the critical freedoms needed for the work of the HRDs is the freedom of association.

Freedom of association been has enriched in all international and regional instruments, Article 20 of the Universal Declaration of Human rights<sup>133</sup> (UDHR) and Article 22 of the International Covenant on Civil and Political Rights<sup>134</sup> (ICCPR) provided for the freedom of association. Even before the adoption of the ICCPR, the International Labour Organization (ILO) recognised the freedom of association on its convention no. 87<sup>135</sup>.

Many Articles and provisions of the Declaration on Human Rights Defenders encourage states to extend, respect and protect the rights provided under it to the persons working individually or in associations with others in the form of NGOs, associations and groups. Article 1 of the Declaration on Human Rights Defenders stated on the importance of the freedom of association for HRDs work in national and international levels<sup>136</sup>.

Article 5 of the same Declaration states that everyone has the right individually or with others to form and join NGO, association or group in their efforts to promote and protect human rights and fundamental

---

<sup>130</sup> ACHPR(XXXXI)06: Resolution on the situation of human rights defenders in Africa; ACHPR /Res.69(XXXV)04: Resolution on the protection of human rights defenders in Africa,  
<sup>131</sup> ACPHR Resolution 69(XXXV) 04, adopted in 2004 in Banjul, The Gambia.

<sup>132</sup> Ibid.

<sup>133</sup> UN General Assembly, Universal Declaration of Human Rights, 10 December 1948, 217 A (III), Art 20, available at: <https://www.refworld.org/docid/3ae6b3712c.html>, accessed 5 August 2019.

<sup>134</sup> UN General Assembly, International Covenant on Civil and Political Rights, Art 22, 16 December 1966, United Nations, Treaty Series, vol. 999, p. 171, available at: <https://www.refworld.org/docid/3ae6b3aa0.html>, accessed 5 August 2019.

<sup>135</sup> International Labour Organization, Freedom of Association and Protection of the Right to Organize Convention, No. 87, available at: [https://www.ilo.org/dyn/normlex/en/f?p=NORMLEXPUB:12100:0::NO::P12100\\_INSTRUMENT\\_ID:312232](https://www.ilo.org/dyn/normlex/en/f?p=NORMLEXPUB:12100:0::NO::P12100_INSTRUMENT_ID:312232), accessed 5 August 2019.

<sup>136</sup> Declaration on Human Rights Defenders, supra 2, Art1.

freedoms<sup>137</sup>. The references and relation between the right to freedom of association and the work of HRDs are apparent in the Declaration.

At the regional level, Freedom of association granted under Article 11 of the European Convention on Human Rights<sup>138</sup>, Article 16 of the American Convention on Human Rights<sup>139</sup> and Article 10 of the ACHPR<sup>140</sup>.

The Inter-American Commission on Human Rights has stated that member states should ensure that the procedures to enter human rights NGOs into public registries will not impede their work, and member states procedures in this regard shall have a declaratory and not a constitutive effect<sup>141</sup>. The European Commission on Human Rights in *Sidiropoulos & Others v. Greece*<sup>142</sup> established that “*The right to form an association is an inherent part of the right to free association, "without which that right would be deprived of any meaning*<sup>143</sup>”.

Recently many states have tried to limit and restrict the freedom of association of HRDs by many means to control their work and activities, such restrictions and limitations put the States in direct violations of their international legal obligations. The following sections shall address the limitation on freedom of association and its affection on HRDs right to work.

### **Freedom of Association Limitations:**

#### **State duty to respect, protect and fulfil:**

Freedom of association is not an absolute right, although under IHRL states should respect, protect and fulfil all the rights and freedoms provided under the treaties which have they ratified<sup>144</sup>. General Comment 31 of the Human Rights Committee (HRC) stated that the human rights and freedoms granted under the ICCPR are legally binding on the states parties<sup>145</sup>, and states cannot invoking provisions of

---

<sup>137</sup> Ibid, Art 5 (b).

<sup>138</sup> Council of Europe, European Convention for the Protection of Human Rights and Fundamental Freedoms, as amended by Protocols Nos. 11 and 14, 4 November 1950, ETS 5, Art 11, available at: <https://www.refworld.org/docid/3ae6b3b04.html>, accessed 5 August 2019.

<sup>139</sup> Organization of American States (OAS), American Convention on Human Rights, "Pact of San Jose", Costa Rica, 22 November 1969, Art 16, available at: <https://www.refworld.org/docid/3ae6b36510.html>, accessed 5 August 2019.

<sup>140</sup> Organization of African Unity (OAU), African Charter on Human and Peoples' Rights ("Banjul Charter"), 27 June 1981, CAB/LEG/67/3 rev. 5, 21 I.L.M. 58 (1982), Art 10, available at: <https://www.refworld.org/docid/3ae6b3630.html>, accessed 5 August 2019.

<sup>141</sup> Jacqueline Van De Velde, p 724.

<sup>142</sup> *Sidiropoulos & Others v. Greece*, 1998-IV Eur. Ct. H.R.

<sup>143</sup> Ibid.

<sup>144</sup> Art 2 of ICCPR & ICESCR. Available at: <https://www.refworld.org/docid/3ae6b3aa0.html> & <https://www.refworld.org/docid/3ae6b36c0.html>, accessed 17 August 2019.

<sup>145</sup> UN Human Rights Committee (HRC), General comment no. 31 [80], The nature of the general legal obligation imposed on States Parties to the Covenant, 26 May 2004, CCPR/C/21/Rev.1/Add.13, para3, available at: <https://www.refworld.org/docid/478b26ae2.html>, accessed 8 August 2019.

the constitutional law or other aspects of domestic law to justify a failure to perform or give effect to these obligations<sup>146</sup>. This obligation flows directly from the principles enriched under Article 27 of the Vienna Convention on the Laws of Treaties<sup>147</sup>. Jacqueline Van De Velde states that under the duty to protect states have positive and negative obligations, for the negative ones, States must not interfering with human rights<sup>148</sup>. He adds the positive obligation of the State is to create a legislative framework to ensure the protection of the rights and liberties provided under the international treaties<sup>149</sup>, imposing regulations and policies which infringe upon such obligations violate Article 2 of the ICCPR<sup>150</sup>.

Ulisses Terto Neto argues that states have a duty under IHRL to protect HRDs and their work because their work is essential to the realisation of human rights and to the strength of democracy such principles reflected in the international human rights treaties which states are bound with them<sup>151</sup>.

#### **Derogation and Limitation under IHRL:**

Although Article 2 of the ICCPR secure the core of the rights and require states to take the necessary measures to give effect to the rights and freedoms provided under it at the domestic level<sup>152</sup>, states have to ensure that their national laws conform with the Covenant provisions<sup>153</sup>. However, Article 4 of the ICCPR allows in certain situations states to derogate from or to limits some of the Covenant obligations<sup>154</sup>. According to ICCPR General Comment 29, such derogation should be exceptional and temporary<sup>155</sup>; two fundamental conditions must occur before resorting to limit the ICCPR rights and freedoms; first, the situation must amount to a state of emergency which threaten the life of the nation and second must have officially proclaimed a state of emergency<sup>156</sup>. The derogation measures should be "*limited to the extent strictly required by the exigencies of the situation*"<sup>157</sup>, Evan J. Criddle and Evan Fox-Decent argues that without public order human rights cannot be enjoyed thoroughly; thus international law permits states to impose limitation on some rights and freedoms during emergencies

---

<sup>146</sup> Ibid, para4.

<sup>147</sup> Ibid.

<sup>148</sup> Jacqueline Van De Velde, P723.

<sup>149</sup> Ibid.

<sup>150</sup> Ibid.

<sup>151</sup> Ulisses Terto Neto, Protecting Human Rights Defenders in Latin America A Legal and Socio-Political Analysis of Brazil, Governance, Development, and Social Inclusion in Latin America, International Studies Instituto Mora Mexcio City, Mexico, 2018.

<sup>152</sup> General Comment 31, para13.

<sup>153</sup> Ibid.

<sup>154</sup> ICCPR, Art4.

<sup>155</sup> UN Human Rights Committee (HRC), CCPR General Comment No. 29: Article 4: Derogations during a State of Emergency, 31 August 2001, CCPR/C/21/Rev.1/Add.11, para2, available at: <https://www.refworld.org/docid/453883fd1f.html>, accessed 8 August 2019.

<sup>156</sup> Ibid.

<sup>157</sup> Ibid, para 4.



as necessary to preserve essential public institutions<sup>158</sup>. On the other hand according to Van De Velde the derogation from international legal obligations is only permitted in narrow circumstances where public emergency threaten the nation life and where the state of emergency officially proclaimed<sup>159</sup>. He adds even then the derogation should be limited to “the extent strictly required by the exigencies of the situation” and the derogation measures are not violating other international law obligations<sup>160</sup>.

The Human Rights Committee (HRC) stated in its decision in *Katsora and ors v Belarus*<sup>161</sup> that restriction of the freedom of association should meet the following conditions: (a) must be provided by law; (b) must be imposed for the purposes set out in Article 22 para (2); (c) must be necessary in democratic society<sup>162</sup>. The HRC added the democratic society referred to indicates the existence and operations of associations; such associations include the ones that peacefully promote ideas not necessarily favourable by the governments<sup>163</sup>. According to the HRC decision, Belarus did not provide proof that the denial of registration of the association was under one of these conditions and such decision precluded the enjoyment of freedom of association<sup>164</sup>. The HRC decided that Belarus violated Article 22 (1) of the ICCPR<sup>165</sup>.

In another decision, the HRC recalled in the case of *Boris Zvozskov and ors v Belarus* that the right to freedom of association under Article 22 of the ICCPR could only be restricted where the strict criteria outlined in Article 22(2) of the ICCPR had been complied with. The HRC reaffirmed that the right to freedom of association was crucial for the effective functioning of any democratic society. Therefore any restriction on that right must be provided for by law and must also be both necessary and reasonable<sup>166</sup>.

In *Lawless v. Ireland*<sup>167</sup> the European Court of Human Rights (ECtHR) defined public emergency as a "danger or crisis" that has four elements, present or imminent, exceptional, concerns the entire

---

<sup>158</sup> Evan J. Criddle and Evan Fox-Decent, Human Rights, Emergencies, and the Rule of Law, *Human Rights Quarterly* 34 (2012) 39-87 © 2012 by The Johns Hopkins University Press, p47.

<sup>159</sup> Jacqueline Van De Velde, p713.

<sup>160</sup> *Ibid.*

<sup>161</sup> *Katsora and ors v Belarus*, Human Rights Committee Merits, UN Doc CCPR/C/100/D/1383/2005, IHRL 146 (UNHRC 2010), 25th October 2010.

<sup>162</sup> *Ibid.*, para 8.

<sup>163</sup> *Ibid.*

<sup>164</sup> *Ibid.*

<sup>165</sup> *Ibid.*

<sup>166</sup> *Boris Zvozskov and ors v Belarus*, Human Rights Committee Merits, para 7, UN Doc CCPR/C/88/D/1039/2001, (2007) 14 IHRR 319, IHRL 1567 (UNHRC 2006), 17th October 2006.

<sup>167</sup> *Lawless v. Ireland* [Lawless Commission] 1 Eur. Ct. H.R. (ser. B) at 82, § 90 (1960-961).

population, and constitutes a threat to the organized life of the community<sup>168</sup>, this definition has been followed by other international and regional bodies<sup>169</sup>.

Besides the general limitations imposed by Article 4 of the ICCPR, the freedom of association also contains particular built-in restriction. Article 22 (2) allows for limits when “*prescribed by the law which are necessary in a democratic society in the interests of national security or public safety, public order (ordre public), the protection of public health or morals or the protection of the rights and freedoms of others*”<sup>170</sup>. According to this provision, the legitimacy of such limitation based on three parts; they should establish by the law; they should be pursued to legitimate aim and necessary in a democratic society. We can say that limitation on the freedom of association permitted in fixed terms and situations and such restriction should be of temporary bases and do not affect the essence of the freedom of association.

The Declarations on Human Rights Defenders also address the limitation which may impose by the state to restrict HRDs work. According to Article 17, such limitations and restrictions should conform with the international obligations and determined by law to secure the rights and freedoms of other individuals; they should be in line with the requirements of morality, public order and the general welfare in a democratic society<sup>171</sup>.

### **International Challenges and Restrictions of Freedom of Association:**

Freedom of association is a fundamental precondition for HRDs to protect and promote human rights and to enable them to carry out their work<sup>172</sup>. Internationally HRDs and their NGOs faced many challenges and restrictions, Carl Gershman and Michael Allen mentioned some of them such as constraints on the right to associate and the freedom to form NGOs, impediments to registration and denial of legal status, restrictions on foreign funding and domestic financing and ongoing threats through the use of discretionary power<sup>173</sup>.

Many states tend to impose national laws limits the freedom of association of HRDs and human rights NGOs; such laws impose many restrictions on NGOs registration and puts obstacles on NGOs access to fund. States usually justify imposing such regulations due to national security and protecting their

---

<sup>168</sup> Ibid.

<sup>169</sup> Evan J. Criddle and Evan Fox-Decent, *supra*31.

<sup>170</sup> ICCPR, Art 22 (2).

<sup>171</sup> Ibid, Art17.

<sup>172</sup> Right of NGOs to funding, P26.

<sup>173</sup> Carl Gershman, Michael Allen, *New Threats to Freedom: The Assault on Democracy Assistance*, (2006), 17, *Journal of Democracy* 36-51.

sovereignty. Van De Velde argues that states often offer many justifications when they impose domestic laws that restrict the freedom of association of HRDs and NGOs, such as preventing foreigners from interference with internal affairs of the state, national security protection and ensuring state sovereignty<sup>174</sup>. According to him these justifications are not acceptable, according to him those states have legal binding obligations under the international treaties, such as the ICCPR which allows derogation only in exceptional situations, all of the abovementioned justifications does not constitute one of the permissible or sufficient reasons to justify restrictions on the fundamental rights guaranteed by the ICCPR<sup>175</sup>.

When discussing the state sovereignty as one of the reasons to limit the freedom of association of HRDs and NGOs Van De Velde states that as the ICCPR contains limited reasons for restricting the freedom of association and provide no way to expand or modify such limitation reasons. He adds preserving state sovereignty is not one of these reasons, then domestic laws which restrict the freedom of association of HRDs and their associations for such reason are violating the ICCPR and states international legal obligations<sup>176</sup>.

The following paragraphs shall focus on the matters of HRDs associations and NGOs with relation to registration and the issues of access to fund, and how these two subjects are strongly related to the right to freedom of association and affected the work and existence of the HRDs.

#### **Restriction on NGOs Registration:**

An essential element of the HRDs right to work is their ability and right to form and operate legally in the countries where they carry out their activities<sup>177</sup>; this is generally done through establishing an NGO or a CSOs. HRDs in their aim to form and operate an NGO face several problems and obstacles such as complexity or slowness of registration process, prolonged procedures, exclusion of certain activities which they are not allowed to work in and many others legal and practical obstacles.

The Commentary to the Declaration on Human Rights Defenders prepared by the Special Rapporteur on the Situation of Human Rights Defenders stated that, in many countries, "*national laws regulating the functioning of NGOs impose severe restrictions on their registration, funding, management and*

---

<sup>174</sup> Jacqueline Van De Velde, P 706.

<sup>175</sup> Ibid, p707.

<sup>176</sup> Jacqueline Van De Velde, p 710.

<sup>177</sup> Special Rapporteur on the Rights and Freedoms of Peaceful Assembly and of Association, Observatory for the Protection of Human Rights Defenders, Violations of the right of NGOs to funding: from harassment to criminalization (2013), P5, available at: <http://www.omct.org/human-rights-defenders/reports-and-publications/2013/02/d22162/>, accessed 5 August 2019, P26.

*operation. Instead of providing a legal basis to NGOs and guaranteeing their rights, domestic legislation has often been enforced to keep NGOs under strict control and has been arbitrarily used to legitimise taking legal action against human rights NGOs for activities protected and promoted by the Declaration. In other countries, where legislation on freedom of association appears to be in accordance with international law, registration requirements have been used arbitrarily or restrictively to void legal protection for those human rights NGOs that are most critical of the Government<sup>178</sup>.*

Moreover, the Commentary noticed that many states use different measures to restrict the work and activities of HRDs such as banning informal groups, imposing complex registration process, establishing discriminating practices in recognition of freedom of association and interfering in the HRDs NGOs activities and work<sup>179</sup>. A new global trend in imposing legislations that threatening the human rights NGOs freedom of association and ability to work could be noticed easily, according to Van De Velde, more than sixty counties have drafted or passed laws and regulations that cripple the NGOs and CSOs work<sup>180</sup>.

Under IHRL registration is not a pre-condition to practice the right to freedom of association, Article 22 of the ICCPR and Article 5 of the Declaration on Human Rights Defenders did not impose any obligation on associations or NGOs to be registered before they could carry out their work. HRDs should have the right and freedom to practice their work without any obligation to register their NGOs and associations with the state authorities<sup>181</sup>.

The Observatory for the Protection of Human Rights Defenders report highlighted an essential issue regarding state registration requirement, as states demand all organisations and association no matter what their size is to be registered, the report refers to this point as evidence of the state intention to control and surveillance of all HRDs activities and work<sup>182</sup>. As per the report analysis, one of the reasons behind this is for states to screen and identify all groups and associations who might criticise their human rights record and make it easy for the state to control them.

---

<sup>178</sup> Margaret Sekaggya, Commentary to the Declaration on the Right and Responsibility of Individuals, Groups and Organs of Society to Promote and Protect Universally Recognized Human Rights and Fundamental Freedoms, 2011, available at: <http://www.ohchr.org/Documents/Issues/Defenders/CommentarytoDeclarationondefendersJuly2011.pdf>, accessed 8 August 2019.

<sup>179</sup> Ibid, P27.

<sup>180</sup> Jacqueline Van De Velde, P691.

<sup>181</sup> Commentary to the Declaration on Human Rights Defenders, P28.

<sup>182</sup> Observatory for the Protection of Human Rights Defenders report, P28.

Choosing not to register in many cases cannot be an option for HRDs and human rights NGOs, as many states accompany the obligation to register with laws that criminalise the activities of unregistered groups<sup>183</sup>, such laws exist in Algeria, Belarus, Burma, Egypt<sup>184</sup> and Sudan<sup>185</sup> as well. Choosing not to register or failing to register could result in severe consequences such as criminal offences under state laws<sup>186</sup> or block of access to fund due to the lack of legal status<sup>187</sup>. Such criminalisation considered as one of the greatest threats of the freedom of association and right to work of HRDs<sup>188</sup>.

On the other hand, although registration should not be one of the obligations for NGOs and HRDs under IHRL to carry out their work. HRDs may have their reasons to choose not to register their NGOs and entities, such as avoiding repression or the complex registration process<sup>189</sup>, or for internal management reasons like unstable structure or the cost of the registration process<sup>190</sup>. However, acquiring a legal status may help HRDs and their NGOs to practice work easily. Granting NGOs legal status enable them for example to rent offices, employ staff, benefit from tax incentives and most importantly open bank account<sup>191</sup>, as some funding bodies only provide fund to the registered NGOs and CSOs<sup>192</sup>, acquiring legal status may help NGOs also to register for international cooperation funding<sup>193</sup>, which would definitely help them to conduct their work. For such reasons, registration should consider as an optional step that may help HRDs to acquire favourable conditions and not as an obligation step that must be followed.

Of course states has the right to enact laws to regulate the NGOs and CSOs work, the legal obligation on the State before imposing such regulations is to make sure that these laws conform with the state international legal obligations, Van De Velde stats that “*states have the right to regulate NGOs-even to set restrictions on them. But international human rights law leaves room for states to implement necessary, legitimate, and proportionate restrictions: nothing more*<sup>194</sup>”. Another opinion raised by some

---

<sup>183</sup> Ibid.

<sup>184</sup> Ibid.

<sup>185</sup> Humanitarian Work Act, Art 23.

<sup>186</sup> Ibid, Art 24.

<sup>187</sup> Ibid.

<sup>188</sup> Observatory for the Protection of Human Rights Defenders report, P28.

<sup>189</sup> Ibid.

<sup>190</sup> Ibid.

<sup>191</sup> Ibid, P29.

<sup>192</sup> Ibid.

<sup>193</sup> Ibid.

<sup>194</sup> Jacqueline Van De Velde, P710.

authors<sup>195</sup> that although states have the legal right to enact laws to regulate the NGOs sector, however, the development in recent years in the “NGOs-laws” have drawn some questions about the motivations of the states<sup>196</sup>. According to the article, these laws are often worded vaguely leaving the door open for interpretation and abuse by the state<sup>197</sup>. In the author opinion, such regulations also help States to avoid international criticism about their attitude to HRDs and their work.

Generally, we can refer to two kinds of registration process NGOs are usually required to undertake to acquire legal status, the first one is the notification process, and the other is the prior authorisation process<sup>198</sup>. The notification process is once NGOs automatically earn a legal status as soon as they notify the competent authorities by the founder members of their existence and intention to conduct work<sup>199</sup>. Although this kind of process is considered flexible and straightforward compared to the other type, however, sometimes it may be misapplied by bureaucracy or the excessive use of state discretionary powers<sup>200</sup>. For example, although Mexico applies such system, however, due to the complicated procedures it could take several months for NGOs to grant legal status<sup>201</sup>, this delay of official recognition could affect the NGOs ability and right to work.

The second registration system is the prior authorisation process, in which the NGOs must wait for the competent state authorities to decide on their registration request<sup>202</sup>. Besides the complex registration procedures, the arbitrary nature of the examination of the registration application and ill-defined registration procedures considered a threat to the HRDs work<sup>203</sup>. In some cases, states tend to prolong the registration procedures, which results in making the NGOs waiting for a long time before they can operate legally<sup>204</sup>. As noticed by the Observatory for the Protection of Human Rights Defenders report in some countries NGOs could wait for several years before even receiving a response for their registration application; this results in freezing the NGOs activities till they obtain the registration

---

<sup>195</sup> The article referred to is written by Alice Nah, Karen Bennett, Danna Ingleton and James Savage, titled A Research Agenda for the Protection of Human Rights Defenders, Journal of Human Rights Practice Vol. 5, Number 3, (2013), Oxford University Press, P401–420.

<sup>196</sup> Ibid.

<sup>197</sup> Ibid.

<sup>198</sup> Ibid.

<sup>199</sup> Ibid.

<sup>200</sup> Ibid, P30.

<sup>201</sup> Ibid.

<sup>202</sup> Ibid, p31

<sup>203</sup> Ibid.

<sup>204</sup> Ibid.

certificate which automatically violates their freedom of association and right to work. In such system refusal of registration is considered as the main obstacle and violation<sup>205</sup>.

We can argue although registration should not be one of the preconditions of the NGOs existence and performance under IHRL standers. However, it is not per se bad or restricts the freedom of association and right to work of HRDs, but when it adds to the criminalisation of HRDs work and the intention of states to control and intervene with their activities this when it violates the freedom of association and HRDs right to work. As stated by the Observatory for the Protection of Human Rights Defenders report the registration process does not in itself violates the right to work or freedom of association of the HRDs and their NGOs unless it was the only system applicable in the country, and HRDs cannot associate themselves without it<sup>206</sup>.

The other aspect which can affect negatively on the right to work of HRDs and human right NGOs is the restriction imposed by states on access to fund. The number of countries adopting and applying restrictive laws is increasing globally; the majority of human rights NGOs cannot function well and could barely survive in the absence of fund received from foreign donors<sup>207</sup>. States uses different kinds of restriction on access to fund mainly to harm the NGOs ability to conduct their work. In some countries HRDs are prohibited to receive foreign fund (Bahrain and Belarus)<sup>208</sup>, in other countries foreign fund directed to specific activities is forbidden (Ethiopia)<sup>209</sup>, and in some others access to fund is subject to the government authorisation (Egypt)<sup>210</sup>. The following paragraphs shall address HRDs access to fund and how restrictions imposed on such access violates their freedom of association and right to work.

**Restriction on Access to fund:**

Article 13 of the Declaration on Human Rights Defenders stated that everyone either working alone or joining with others shall have the right to receive resources to facilitate the work of the promotion and protection of human rights and fundamental freedoms<sup>211</sup>. The right to access to fund explicitly provided for under the Declaration on the Elimination of All Forms of Intolerance and of Discrimination Based on

---

<sup>205</sup> Ibid.

<sup>206</sup> Observatory for the Protection of Human Rights Defenders, P41.

<sup>207</sup> Ibid, P42.

<sup>208</sup> Ibid.

<sup>209</sup> Ibid.

<sup>210</sup> Ibid.

<sup>211</sup> Declaration on Human Rights Defenders, Art 13.

Religion or Belief<sup>212</sup>. The HRC established in the case of *Viktor Korneenko et al. v. Belarus*<sup>213</sup> that the right to freedom of association does not only mean to have a right to form an association but also the right of such association to carry out their activities<sup>214</sup>. According to the protection granted under Article 22 of the ICCPR, the right to freedom of association extended to all the activities carried on by the association; such right includes the fundraising activities<sup>215</sup>. The HRC also added any restriction to such activities which impede the ability of the associations to carry out its activities is an interference with Article 22 of the ICCPR<sup>216</sup>. However, despite all these grantees currently, NGOs and CSOs are facing a lot of challenges and difficulties around the world regarding receiving and accessing funds, especially foreign funds. As described by Mr Maina Kiai<sup>217</sup> this leads to shrinking their participation and expression in public space<sup>218</sup>, access to fund is one of the significant aspects that makes it difficult to HRDs and NGOs to carry on their work. According to Mr Kiai states should facilitate access to fund for NGOs not restricting it<sup>219</sup>, which is not the case as he referred to in his report to the Human rights Council<sup>220</sup>, as in many cases states impose legislation and regulations that put CSOs and NGOs under control and restrict access to fund for them<sup>221</sup>.

States uses different ways to restrict NGOs access to fund either by imposing restrictive laws and regulations or by creating practical and procedural restrictions making access to fund nearly impossible. As addressed in the previous section, the matter of the NGOs obligation to register in some states affects their ability to access the fund, especially for the unregistered NGOs. As noticed by the Observatory for the Protection of Human Rights Defenders report, this discourages donors from providing or

---

<sup>212</sup> UN General Assembly, Declaration on the Elimination of All Forms of Intolerance and of Discrimination Based on Religion or Belief, 25 November 1981, A/RES/36/55, Art 6, available at: <https://www.refworld.org/docid/3b00f02e40.html>, accessed 5 August 2019.

<sup>213</sup> *Viktor Korneenko et al v. Belarus*, Human Rights Committee, Communication No. 1274/2004, U.N. Doc. CCPR/C/88/D/1274/2004 (2006), available at: <http://hrlibrary.umn.edu/undocs/1274-2004.html>, accessed 5 August 2019.

<sup>214</sup> *Ibid*, P7.

<sup>215</sup> *Ibid*.

<sup>216</sup> *Ibid*.

<sup>217</sup> Mr. Maina Kiai was. United Nations Special Rapporteur on the rights to freedom of peaceful assembly and of association from 1 May 2011 until 30 April 2017, see the Special Rapporteur on the Rights and Freedoms of Peaceful Assembly and of Association, Observatory for the Protection of Human Rights Defenders, *Violations of the right of NGOs to funding: from harassment to criminalization* (2013), P5.

<sup>218</sup> *Ibid*.

<sup>219</sup> *Ibid*, P6.

<sup>220</sup> UN General Assembly, Human Rights Council, Report of the Special Rapporteur on the rights to freedom of peaceful assembly and of association, Maina Kiai, A/HRC/23/39, (2013), Para 12, available at: <https://documents-dds-ny.un.org/doc/UNDOC/GEN/G13/133/84/PDF/G1313384.pdf?OpenElement>, accessed 5 August 2019.

<sup>221</sup> *Ibid*, Para18.



offering fund to unregister NGOs which as the report mentioned depending mainly on such donations and funds to survive<sup>222</sup>.

As the number of states who are drafting and imposing restrictive laws on access to fund by NGOs is increasing, States should understand and accept that access to fund is a right. This principle is well established by the HRC<sup>223</sup>; States should clearly understand that imposing such restrictive laws and acting in abusive ways against the NGOs right to access to fund puts them in direct violation of their international legal obligations<sup>224</sup>. The report submitted by the Special Representative of the Secretary-General on Human Rights Defenders, Hina Jilani, to Secretary-General highlighted a common feature regarding the increased number of newly enacted laws by states which aims to restrict access to fund by NGOs<sup>225</sup>. The report also raised important issues about how in the light of the limited resources available to the NGOs restriction on access to the fund can affect the HRDs ability to carry out their work and how in some cases it can endanger the very existence of their organisations<sup>226</sup>. The report concludes by making a recommendation for states to make efforts to enable and facilitate access to fund by law<sup>227</sup>.

Regionally, the African Commission on its resolution on the situation of human rights defenders in Africa expressed concerns about the shrinking civic space by the adoption of laws within the framework of the fight against terrorism, in particular regarding freedom of association and other rights and freedoms which affect the work of HRDs<sup>228</sup>. The resolution calls on states to refrain from using the fight against terrorism as an excuse to restrict fundamental freedoms, such as the freedom of association<sup>229</sup>. The resolution also encourages the state parties to adopt specific laws in conformity with the Declaration on Human Rights Defenders, the Grand Bay Declaration and Plan of Action, and the Kigali Declaration, and take the required measures for their implementation<sup>230</sup>.

Moreover, the Special Rapporteur on the Situation of Human Rights defenders in Africa made a recommendation on her intersession activity report to the African Commission to provide both financial

---

<sup>222</sup>Observatory for the Protection of Human Rights Defenders, P28.

<sup>223</sup> Viktor Korneenko et al v. Belarus, supra 45.

<sup>224</sup> Observatory for the Protection of Human Rights Defenders, P8.

<sup>225</sup> UN General Assembly, Applying the Declaration on human rights defenders. Meeting the standards of the right to association, A/59/401, P75, available at: [https://www.un.org/en/ga/search/view\\_doc.asp?symbol=A/59/401](https://www.un.org/en/ga/search/view_doc.asp?symbol=A/59/401), accessed 5 August 2019.

<sup>226</sup> Ibid, P77.

<sup>227</sup> Ibid, 82 (t).

<sup>228</sup> Resolution on the Situation of Human Rights Defenders in Africa - ACHPR/Res. 376 (LX) 2017, available at: <https://www.achpr.org/sessions/resolutions?id=419>

<sup>229</sup> Ibid.

<sup>230</sup> Ibid.

and material support to HRDs to facilitate their work in promotion and protection of human rights in Africa<sup>231</sup>.

Many states argue that the enacted regulations to control access to funds by NGOs and HRDs are not violating their international obligation to respect, protect and fulfil the freedom of association or the right to work of HRDs. As stated before freedom of association is not an absolute right, and states have the right to restrict such freedom as long as is prescribed by law and when such restrictions are necessary for a democratic society as specified in ICCPR. However, as discussed earlier in this chapter, to impose such restrictions on this right state's needs to bear in mind that freedom of association should be the rule and limitations are the exceptions which should not impair the essence of the right<sup>232</sup>. Restricting access to fund for HRDs is undermining their ability to exist and their freedom of association and right to work.

In some cases, restrictions on the access to fund might be legitimate and justified within the context of the fight against terrorism and money laundering as pointed by the Special Rapporteur on the Rights to Freedom of Peaceful Assembly and of Association<sup>233</sup>. However, such justification should never be used to undermine and impede the legitimate work of the HRDs and NGOs<sup>234</sup>. The Special Rapporteur on the Situation of HRDs upheld a similar position, stating that the justifications provided by governments regarding fighting terrorism and money laundering are merely rhetorical and the real intention of the government is to restrict the ability of HRDs and human rights organisations to carry out their work<sup>235</sup>. As suggested in the first report, alternative mechanisms to fight terrorism and money laundering could be used, such as banking laws and criminal laws<sup>236</sup>. Van De Velde adds that fight against terrorism is a valid reason to limit freedom of association and access to fund due to national security reasons<sup>237</sup>. However, a reasonable and objective national security justification has to exist, the state must first proof

---

<sup>231</sup> African Commission on Human and People's Rights, Report on the Implementation of the Mandate of the Special Rapporteur on the Human Rights Defenders in Africa, available at: <http://www.achpr.org/sessions/51st/inter-session-activity-reports/human-rights-defenders/>, accessed 5 August 2019.

<sup>232</sup> UN Human Rights Committee (HRC), *CCPR General Comment No. 27: Article 12 (Freedom of Movement)*, 2 November 1999, CCPR/C/21/Rev.1/Add.9, available at: <https://www.refworld.org/docid/45139c394.html>, accessed 5 August 2019.

<sup>233</sup> UN General Assembly, Human Rights Council, Report of the Special Rapporteur on the Rights to Freedom of Peacefully Assembly and of Association, (2012), A/HRC/20/27, P 94, available at: [https://www.ohchr.org/\\_layouts/15/WopiFrame.aspx?sourcedoc=/Documents/HRBodies/HRCouncil/RegularSession/Session20/A-HRC-20-27\\_en.pdf&action=default&DefaultItemOpen=1](https://www.ohchr.org/_layouts/15/WopiFrame.aspx?sourcedoc=/Documents/HRBodies/HRCouncil/RegularSession/Session20/A-HRC-20-27_en.pdf&action=default&DefaultItemOpen=1), accessed 5 August 2019.

<sup>234</sup> Ibid.

<sup>235</sup> UN General Assembly, Report of the Special Rapporteur on the situation of human rights defenders, (2009), A/64/226, P94, available at: [https://www.un.org/en/ga/search/view\\_doc.asp?symbol=A/64/226](https://www.un.org/en/ga/search/view_doc.asp?symbol=A/64/226), accessed 5 August 2019.

<sup>236</sup> A/HRC/20/27, supra 65, P94.

<sup>237</sup> Jacqueline Van De Velde, P711.

restriction on freedom of association, and access to fund is needed to preclude a real and not only hypothetical national security danger<sup>238</sup>.

As noticed by the Observatory for the Protection of Human Rights Defenders report, states usually avoid the risk of attracting international attention for their human rights violations by imposing restrictive regulations. States use and impose administrative or practical measures affects access to fund by NGOs, using such methods rather than banning such NGOs is definitely more effective<sup>239</sup> and also enable states avoiding the risk and be “naming and shaming” globally.

Besides the adoption of the restrictive laws that enable the states of controlling access to fund by NGOs, some states take more manipulating ways in their efforts in this regard. By attacking the HRDs reputation and labelling them and their NGOs who receives funds from international donors as “foreign agents”<sup>240</sup> who aims to execute foreign hostile agendas, or by associating their activities to terrorist and criminal acts<sup>241</sup>, this way does not only impact severely on the HRDs and NGOs ability to access to fund but also endanger their safety<sup>242</sup>. States, usually through the official media, uses the public xenophobic and nationalistic sentiment against foreign donors, describing them as foreign entities meddling in the state internal affairs<sup>243</sup>. As Ed Ó Donnabháin express human rights considered by repressive regimes as ‘Western values’ unsuited to the culture of their countries and HRDs described as ‘tools of the West’, traitors, spies or money-grabbing opportunists, and their work in challenging powerful interests has always resulted in attempts to undermine or silence them<sup>244</sup>.

Reputational attacks against HRDs by the states has another serious effect on NGOs work, sometimes NGOs and HRDs hesitate to deal with foreign donors or refuse to accept any fund from them. According to the OBS report due to the lack of national fund, most of domestic NGOs have no other way to function other than receiving the foreign fund<sup>245</sup>; such attacks aim to make confusion between external funding and foreign intervention<sup>246</sup>. By the creation of such link and attacking the HRDs reputation describing them as foreign agents state make a practical restriction to fund access by NGOs which affect directly on their ability to carry out their activities and violate their right to work. The Observatory for the

---

<sup>238</sup> Ibid.

<sup>239</sup> Observatory for the Protection of Human Rights Defenders, P7.

<sup>240</sup> Ibid, P8.

<sup>241</sup> Ibid.

<sup>242</sup> Ibid.

<sup>243</sup> Ibid.

<sup>244</sup> Donnabháin, E. (2019). [online] Taiwanhrj.org. P124, Available at: [http://www.taiwanhrj.org/get/2016122814483176.pdf/THRJ\\_3\\_4\\_ed.pdf](http://www.taiwanhrj.org/get/2016122814483176.pdf/THRJ_3_4_ed.pdf) [Accessed 8 Aug. 2019].

<sup>245</sup> Ibid, P57.

<sup>246</sup> Ibid.

Protection of Human Rights Defenders report observes that such actions and state attacks led some NGOs and HRDs to practice auto-censorship and refrain from seeking foreign fund<sup>247</sup>. In such cases, states are no longer have to impose restrictive laws on access to fund, and they could avoid global criticism and condemn the existence of such laws.

In conclusion, many international and regional human rights instruments have explicitly recognised and worked for the protection and promotion of HRDs freedom of association and right to work, the work and reports of the special rapporteurs in this regard made an essential addition to the global efforts to secure such right. However, an important question to bear in mind is Sudan as a state party to ICCPR and ACHPR applies and safeguards these standers, principles and frameworks? And does Sudan consider the HRDs freedom of association and right to work as one of the human rights and fundamental freedoms which should be respected and protected? To answer such questions, we must apply all international human rights law standers and framework –human rights lens- which mentioned in this chapter. An analysis to answer these questions will be discussed in the following chapter.

---

<sup>247</sup> Ibid, p73.

### **Chapter three:**

#### **Application, Analysis and Recommendations:**

In the previous two chapters this essay has highlighted and discussed the issue of the freedom of association related to HRDs and their NGOs work in Sudan and the challenges that they face. The paper focuses on two elements in this regard, their right to form, join and register an NGO and how the state should not interfering with such right except under the prescribed law procedures which should be in line with the state obligations under IHRL, and the second aspect is access to fund by HRDs. The paper also addressed the IHRL that promote and respect the freedom of association and ensure respect and protection to HRDs right to work as one of the human rights and fundamental freedoms. However, in this chapter, this study shall critically discuss and examine the HRDs freedom of association and right to work of HRDs in Sudan through a human rights lens, the essay shall carry out that by discussing Sudan's international and regional legal obligations concerning such right. The following chapter shall address firstly the human rights conventions that Sudan has ratified, which are related to the promotion and protection of the HRDs right to work and freedom of association. Secondly, the following paragraphs shall critically examine the national system of Sudan, including the constitution, legislation and policies related to such rights. The paper also will address the limitations on the freedom of association in Sudan and whether it is in line with the international and regional legal obligation which Sudan ratified or fallen short behind it.

In addition to that, the author shall make some suggestion and provide some recommendations to the government of Sudan, and HRDs regarding the freedom of association and their right to work and what should each one of the mentioned groups could do and provide to enhance these rights in Sudan.

### **Sudan's International and Regional human rights legal obligations:**

Sudan ratified both the ICCPR and the ICESCR in 1986<sup>248</sup>, in the same year Sudan also ratified the African Charter on Human and People's Rights<sup>249</sup>, these two instruments (ICCPR and ACHPR) have given an international legal status for the right to freedom of association and its related aspects.

As established in the second chapter, under the ICCPR state parties should give an immediate effect for the rights and freedoms granted by it<sup>250</sup>, states should respect, protect and fulfil all the rights and freedoms mentioned by the ICCPR without any discrimination<sup>251</sup>.

Under Art 2 of the ICCPR, state parties should take steps to adopt and to give effect in its legislations to the rights and freedoms provided under the ICCPR<sup>252</sup>. General Comment 31 of the Human Rights Committee stated that states should respect and ensure the rights and freedoms granted by the ICCPR and to give them an immediate effect<sup>253</sup>. The General Comment adds that for the state to fulfil the legal obligations, they have to use legislative, judicial, administrative, educative and other appropriate measures<sup>254</sup>, any failure to comply with this requirements cannot be justified by political, social, cultural or economic reasons<sup>255</sup>.

As highlighted earlier, the Declaration of Human Rights Defenders is soft law and does not form any legally binding obligation on the states. However, the principles and rights mentioned under it based on human rights obligations enshrined in other international legally binding instruments such as the ICCPR and ICESCR and even the Universal Declaration on Human Rights which is considered as the primary source of the global human rights standers and many of its provisions are considered as part of customary law<sup>256</sup>. Moreover, the Declaration on Human Rights Defenders was adopted consensually by the General Assembly, which makes it represents a firm commitment by States to its implementation<sup>257</sup>.

---

<sup>248</sup> UN Human Rights Office of the High Commissioner, available at: <http://indicators.ohchr.org/>, accessed 20 August 2019.

<sup>249</sup> African Commission on Human and People's Rights, Ratification Table of the African Charter on Human and People's Rights, available at: <https://www.achpr.org/ratificationtable?id=49>, accessed 20 August 2019.

<sup>250</sup> General Comment 31, para 4 &13.

<sup>251</sup> Ibid.

<sup>252</sup> ICCPR, Art 2.

<sup>253</sup> General Comment, para5.

<sup>254</sup> Ibid, para 7.

<sup>255</sup> Ibid, para 14.

<sup>256</sup> Hurst Hannum, The UDHR in National and International Law, Health and Human Rights, Vol. 3, No. 2, Fiftieth Anniversary of the Universal Declaration of Human Rights (1998), pp. 144-158, available at: <https://0-www-jstor-org.serlib0.essex.ac.uk/stable/pdf/4065305.pdf?refreqid=excelsior%3Aab2c777868e7ba98fcacb6a010b458b3>, accessed 13 August 2019.

<sup>257</sup> UN Human Rights Office of the High Commissioner, Declaration on Human Rights Defenders, available at: <https://www.ohchr.org/EN/Issues/SRHRDefenders/Pages/Declaration.aspx>, accessed 20 August 2019.

Sudan also by ratifying the ACHPR have a legal obligation under Article 10 of the ACHPR, which recognised the right to freedom of association<sup>258</sup>, in addition to that, Article 25 of the ACHPR makes it a binding duty of the States to promote and ensure the respect of the rights and freedoms contained in the ACHPR<sup>259</sup>.

The African Commission considered the matter of the freedom of association on its Resolution 5(XI) 92<sup>260</sup>, which asked the state parties not to undermine fundamental rights guaranteed by the constitution and international standards<sup>261</sup>. The Resolution also adds in case of state regulates the use of such right by its national laws such regulation should not limit the exercise of this freedom and should be consistence with the state legal obligations<sup>262</sup>.

Regarding the national integration of the ACHPR into domestic laws, the African Commission recommended the state parties to introduce the provisions of art 1-29 of the ACHPR in their constitutions, laws and regulations<sup>263</sup>.

According to the paragraphs above, Sudan has legal binding obligations under international covenants and regional instruments to respect, protect and fulfil the rights and freedoms granted by such covenants and conventions. Sudan also should make its national laws in conformity with such obligations; the following paragraphs shall address the national framework of Sudan and analysis whether it confirms with its international and regional obligations or not.

#### **Domestic legal framework: Sudanese legislations:**

In this section, the author shall address and analysis the Sudanese Interim Constitution as the higher legislation in Sudan which reveals over all other laws and regulations, the author will also mainly discuss the Humanitarian Work Act as the designed law to regulate the work of HRDs and NGOs in Sudan.

---

<sup>258</sup> Organization of African Unity (OAU), African Charter on Human and Peoples' Rights ("Banjul Charter"), 27 June 1981, CAB/LEG/67/3 rev. 5, 21 I.L.M. 58 (1982), Art 10, available at: <https://www.refworld.org/docid/3ae6b3630.html>

<sup>259</sup> Ibid, Art 25.

<sup>260</sup> Resolution on the Right to Freedom of Association, ACHPR, Res.5 (XI) 92, available at: <https://www.achpr.org/sessions/resolutions?id=10>, accessed 20 August 2019.

<sup>261</sup> Ibid.

<sup>262</sup> Ibid.

<sup>263</sup> Resolution on the Integration of the Provisions of the African Charter on Human and Peoples' Rights into National Laws of States, ACHPR, Res. 3(V) 89, available at: <https://www.achpr.org/sessions/resolutions?id=7>, accessed 20 August 2019.

### **Sudan Interim Constitution:**

The Bill of Rights provided under Sudan's Constitution is a very rich document; it offers different kinds of protection for the rights and fundamental freedoms mentioned under the IHRL. According to Article 27 (3) of the interim constitution "*all rights and freedoms enriched in international human rights treaties, covenants and instruments ratified by the Republic of Sudan shall be an integral part of this Bill*<sup>264</sup>", according to this Article all the treaties, covenants and legally binding instrument that Sudan had ratified are part of the Sudanese constitution.

Article 27 (4) of the Sudanese Constitution stated that "*Legislation shall regulate the rights and freedoms enshrined in this Bill and shall not detract from or derogate any of these rights*<sup>265</sup>", according to this Article the Sudanese national legislation should not impose any limitations or restrictions other than the ones provided under international or regional instruments. This Article is robust protection of the rights and freedoms granted under the Bill and should make it difficult for the State to use any excuse to detract or derogate from those rights and freedoms except under international and regional standers.

Article 40 of the Sudanese Constitution recognise the freedom of association, the Article stated "*every person shall have the right to freedom of association with others, including the right to form or join political parties, associations and trade or professional unions for the protection of his interests*<sup>266</sup>" although the Article grantee the right to freedom of association to everyone, however, it mentioned specific areas and kinds for this freedom to be practice and neglected the joining and formation of NGOs or CSOs.

Needless to mention that there is no single article in the Bill or the whole Constitution addressing the protection of HRDs and their rights. The constitution also failed to mention or integrate the provisions of the UN Declaration on Human Rights Defenders and the rights set under the African human rights declaration. However, despite all these significant gaps in the Constitution an argument still could be made based on Art 27 (3) and (4) of the Constitution that the right to freedom of association and the protection of HRDs right to work are constitutional rights and based on that Sudan have a legal obligation to respect, protect and fulfil these rights. Sudan has a legal obligation to protect HRDs, NGOs and CSOs against the arbitrary interference in their work. Sudan also has a legal obligation to facilitate

---

<sup>264</sup> Sudan Interim Constitution, Art 27 (3).

<sup>265</sup> Ibid, Art 27 (4).

<sup>266</sup> Ibid, art 40 (1).



access to fund to HRDs as part of their freedom of association and the protection available under Article 22 of the ICCPR and not impose domestic laws to target and harass them or criminalise their work.

The following part shall address and analysis the Humanitarian Work Act as a piece of legislation that regulates the work of HRDs and their NGOs.

### **Regulating the Voluntary and Humanitarian Work Act:**

As mentioned previously in the first chapter Sudan governs the work of HRDs and NGOs through the Humanitarian Work Act 2006, the Act has mainly three different kinds of organisations which are charity organisations, civil society organisations and non-governmental foreign voluntary organisations<sup>267</sup>, the Act does not explicitly recognise other types of NGOs and human rights groups. The Humanitarian Work Act contains many provisions that deals with the principles and goals that regulates the humanitarian and voluntary work<sup>268</sup>, the following paragraphs shall address the Act in general and then shall focus on the related provisions to access to fund by NGOs, NGOs registration and cancellation and the violations and penalties.

The Humanitarian Work Act composed of 32 articles, divided into six chapters, the first four chapters address in general the matters of NGOs registration, renewal of registration, rejection of registration and registration cancellation<sup>269</sup> and the establishment, powers and authorities of the HAC<sup>270</sup>. The fifth chapter stats on the crimes, penalties, violations, sanctions and appeals<sup>271</sup>. The last section is about the general provisions about NGOs legal personality, financial records and the amendment of the purposes of the organisation<sup>272</sup>.

The Humanitarian Work Act defines humanitarian and voluntary work as

*“any voluntary non-profit activity carried out by any national or foreign voluntary or charitable organisation registered in Sudan to provide humanitarian assistance, relief, public services, human rights services, environmental protection or improving economic and social levels....<sup>273</sup>”*.

The Humanitarian Work Act contains several Articles and provisions that limit the work of HRDs and their NGOs regarding their freedom of association, registration and access to fund, such limits shall be addressed as follows:

---

<sup>267</sup> Humanitarian Work Act, Art 4.

<sup>268</sup> Humanitarian Work Act.

<sup>269</sup> Humanitarian Work Act, Articles 8-14.

<sup>270</sup> Ibid, Articles 18-22.

<sup>271</sup> Ibid, Articles 23&24.

<sup>272</sup> Ibid, Articles 25-32.

<sup>273</sup> Ibid, Art 4.

### **Freedom of Association Limitation:**

Article 5 of the Humanitarian Work Act provide the first restriction to the freedom of association of the HRDs and their association. The Article states that as one of the principles which regulate the humanitarian work in Sudan is the non-interference of the foreign voluntary organisations in the Sudanese internal affairs, which affects the state sovereignty<sup>274</sup>. The Article does not provide any description of what constitutes an interference in the internal affairs or what actions consider by the Act as a threat to the state sovereignty. Such vague wording of this Article opens the door widely to the broad and discretionary interpretation by the authorities, giving them a reason to interfere in the HRDs and their organisations' work. As discussed in the second chapter of this paper state sovereignty is not one of the reasons to limit the rights and freedoms provided under the ICCPR which the freedom of association is one of them. Restricting the HRDs freedom of association by Article 5 of the Humanitarian Work Act for such reason could amount to a violation to Sudan international and regional legal obligation under Article 22 of the ICCPR and Article 10 of the ACHPR.

### **NGOs Registration:**

According to the Humanitarian Work Act, registration is a pre-requirement for all kinds of NGOs<sup>275</sup>; the Act states that all sort of CSOs, charity and voluntary organisations working in Sudan to register itself according to the Act provisions<sup>276</sup>. This Article is contrary to the IHRL, which does not require registering to enjoy the right to freedom of association. Under this Article, NGOs and CSOs also need to renew their registration annually<sup>277</sup>. The registrar of the NGOs can reject the application registration of NGOs if they do not satisfy the registration requirements<sup>278</sup>, one of the reasons to such rejection is if the registrar considers one of the NGO activity as interfering with the state sovereignty, which the meaning and ways of such interference are not clear as established previously. The Article also gives the registrar the authority to cancel NGOs and CSOs registration<sup>279</sup>. In Sudan, violating the registration condition could result in serious consequences such as fines and confiscation of the organisation assets<sup>280</sup>. For an NGO to complete the registration process it must provide the competent authorities with a list of at least 30 members<sup>281</sup>; in a way violates the right to freedom of the NGOs with less

---

<sup>274</sup> Ibid, Art 5 (f).

<sup>275</sup> Ibid, Art 8 (1).

<sup>276</sup> Ibid.

<sup>277</sup> Ibid, Art 11.

<sup>278</sup> Ibid, Art 13.

<sup>279</sup> Ibid, Art 14.

<sup>280</sup> Ibid, Art 24.

<sup>281</sup> Ibid, Art 9 (1).

members than 30, and also put an additional burden on HRDs and NGOs when they try to acquire a legal status under the national law. The registration process also requires NGOs to submit proof of technical and financial ability<sup>282</sup>. However, the Humanitarian Work Act did not provide any specific standers for that, which also could violate the right of freedom of association and as well the right to work and the existence of HRDs. Hence registration is a precondition for the creation of NGO, we can even argue such vagueness, and non-clarity of the Humanitarian Work Act regarding the specification of financial and technical ability opens the door for the authorities for board interpretation and arbitrary use of powers. These two conditions in a way add some limitation and restrictions to the right to freedom of association of HRDs as they do not conform with the international and regional standers for the decorating or derogating from such right.

According to Art 11 of the Act obliged the NGOs to renew their registration annually<sup>283</sup> which adds another practical and financial burden on the work of NGOs; in a way, this gives the state control over the existence of NGOs and HRDs and puts them under strict scrutiny annually. Such term also may make HRDs under pressure of losing their legal status, which may result of them not being active and hesitate from conducting their work and not to conflict with the authorities. Again this is fallen short behind the international and regional standers which do not require registration in the first place, adding another obstacle for HRDs and NGOs by asking them to renew their registration every year is a clear violation to their freedom of association and their right to carry out their work.

#### **NGOs Access to Fund:**

The Humanitarian Work Act also addresses the matter of access to fund by HRDs and NGOs. Article 7 of the Humanitarian Work Act address this issue, the Article imposes a massive restriction on access to foreign and domestic funds, it states that grants and funds for organisations programs shall be through a project proposal approved by HAC according to the regulations. Moreover, the Article adds more restriction to the CSOs by forbidding them from receiving any funds from any foreign entity or any foreign person or entity inside the country or any other party except with the Mistier (of the Welfare and Social Security) approval. As we can notice, Sudan puts registration as a first condition to receive the fund, without obtaining a registration certificate NGOs cannot apply to HAC fund approval. Imposing such registration condition is, in fact, a violation to NGOs freedom of association and the activities

---

<sup>282</sup> Ibid, Art 9 (3) (e).

<sup>283</sup> Ibid, Art 11.

associated under such freedom, as referred to fundraising activities and access to fund is one of the elements of the freedom of association, which also should not restrict except by IHRL standers. This Article gives the State broad discretionary power over NGOs and HRDs work. The authorities can simple not granting such approval for NGOs and deny their request to obtain a foreign fund, as discussed previously most of national NGOs depend heavily on foreign source on their existence without such resources NGOs cannot survive or carry out their work. With state practising such power it can easily forbid HRDs from working on specific fields and areas which consider by the state as “red line” and restrict their work on certain issues only. By doing that state is adding some limitation to the work of HRDs which violates their rights under IHRL. The Sudanese Humanitarian Work Act gives the authorities broad power to control the fund and how the NGOs and HRDs should direct the fund that they manage to access, which is a considerable restriction and violation to both freedom of association and the right to work of HRDs.

#### **NGOs Criminalization and Penalties:**

According to Article 23, carrying out any voluntary activities without registering under the provisions of Humanitarian Work Act is considered a crime<sup>284</sup>, such crime is punishable with a fine and confiscating of the NGO money<sup>285</sup>. Article 24 also stats that any violation of any of the Humanitarian Work Act is punishable by warning or suspension of the NGO activity for six months or less. Besides that, the registrar also has the right to press criminal charges against any person or organisation whose beliefs to violate the provision of the Humanitarian Work Act<sup>286</sup>. Moreover, the registrar also has the authority to suspend and ban any person or group who violates the Act provisions from conducting any voluntary or humanitarian work in Sudan for no more than one year<sup>287</sup>. Such Articles put the HRDs and their association under strict security checks and make it hard for them to conduct any valuable work without government approval. As the rest of the Act, the violation and penalties provisions drafted vaguely to empower the state with broad discretionary authorities over the HRDs and their work. The registrar has enormous powers by which he/she can press criminal charges, suspend the NGOs activities and cancel their registration. Such powers should not be put in on person's hand and without clearly stipulating what the terms that should be avoided to violate and how the NGOs could protect themselves against

---

<sup>284</sup> Ibid, Art 23.

<sup>285</sup> Ibid, Art 24.

<sup>286</sup> Ibid, Art 24 (3).

<sup>287</sup> Ibid.

such powers. All of this is a clear violation to the Sudan international and legal obligations in matters related to freedom of association and HRDs right to work freely and without any necessary interference or restrictions.

#### **Sudanese National Policy for HRDs Protection:**

Sudan does not have any national policy or plan to protect the freedom of association or the HRDs work in the country; the authorities do not even acknowledge the vital role that HRDs play in raising awareness and promotion of human rights. They are considered as foreign agents, and the state media targets them and try to draw a social stigma about their work. This is also a considerable gap that needs to be addressed; no one can argue about the vital role that legislations plays to preserve and protect rights and freedoms. However, due to the systematic attacks against the work of HRDs policies and national plans should be adopted to change such negative image which has been planted in the public eyes and minds. Unfortunately, until the finishing of this paper, a new law proposal is presented before the Sudanese General Assembly<sup>288</sup>, the proposed law is expected to impose more harsh limitation and restriction on the HRDs association work<sup>289</sup>.

Conclusively, Sudanese legislation and practices seem to be far from what international standers aim to, Sudanese state should address how to meet those standers and how to fulfil their international and regional legal obligations.

As the previous paragraphs reflected the gap between the international and regional standers and the Sudanese national laws, and how this violates the rights and freedoms of HRDs, the following sections shall provide some suggestions and recommendations on how gap could be filled, especially in light of the new updates and events in the Sudan political developments.

#### **Recommendations:**

Sudan witness now huge developments after the revolution that withdraw El-Bashir regime, the new transitional government has been proposed along with a new interim constitutional declaration<sup>290</sup>. All these developments might open the door for a new era in Sudan, where the vital role of HRDs could be acknowledged and make it possible to abolish or amend the laws that violate their rights and freedoms.

---

<sup>288</sup> See: <https://www.altaghyeer.info/ar/2017/06/03/%D9%85%D9%86%D8%B8%D9%85%D8%A7%D8%AA-%D8%A7%D9%84%D9%85%D8%AC%D8%AA%D9%85%D8%B9-%D8%A7%D9%84%D9%85%D8%AF%D9%86%D9%8A-%D8%AA%D8%AF%D8%B9%D9%88-%D9%84%D9%85%D9%82%D8%A7%D9%88%D9%85%D8%A9-%D9%82%D8%A7/>, accessed 20 August 2019.

<sup>289</sup> Ibid.

<sup>290</sup> See: <http://sudantribune.com/spip.php?article67883>, accessed 20 August 2019.

Based on this the following paragraphs shall make a few suggestions about the actions needed in the future to protect the freedom of association of HRDs and their work in the country whether by the state or from the HRDs themselves.

**For the government:**

Sudan needs to address the gap in its Constitution about respect and protect its international and regional obligation in general and the HRDs protection especially. Sudan needs to integrate the provisions of the Declaration on Human Rights Defenders into the coming Bill of Rights.

Sudan should respect the right to freedom of association and not to limit it without valid justifications in according to the international legal obligations. Sudan should work to conform its national legislations to the international and regional standers, especially concerning freedom of association, unjustified limitations or restrictions imposed on the rights and freedoms should be lifted, and the national laws providing for such limitations should be either abolished or amended.

Sudan needs to amend the Humanitarian Work Act; state sovereignty should not be one of the reasons to limit the NGOs freedom of association. The registration, renewal and cancellation clauses need to be amended; registration should not be a precondition to form and join human rights NGOs, Sudan needs to grantee HRDs freedom of association without such restriction clauses. Clauses related to access to the fund should be reviewed and redrafted to conform to international and regional legal obligations. The Articles criminalise the HRDs work and activities needs to be repealed.

Sudanese National human rights institutions such as the National Human Rights Commission should be more engaged in working with HRDs and providing them with the needed protection. The Sudanese national human rights commission established under the National Human Rights Commission Act 2009, authorised to promote and protect human rights in Sudan and to monitor the application and implementation of the rights and freedoms provided for under the constitutional Bill of Rights<sup>291</sup>. The complaint clauses which empower the Commission to receive and complaints from individuals and NGOs about human rights violations and to address the competent authorities to refrain from such abuses<sup>292</sup> should be active, and they should carry out their duties in protecting and promoting human rights and fundamental freedoms.

---

<sup>291</sup> National Human Rights Commission Act 2009, Art 9.

<sup>292</sup> Ibid, Art 9 (h) (l).

Sudan should consider creating a mechanism for the protection of the HRDs and fixing the current system, Sudan also needs to consider adopting policies and national plans for HRDs protection, as legislation is not enough only.

The next government should work to change society understanding of the work of HRDs and recognising their essential role. By changing the negative image about the work of HRDs and by stopping the attacks against them and their reputations.

Sudan also needs to respect its obligations under Art 2 (3) of the ICCPR and the right of reparation and adequate remedy in the case of registration denial, cancellation or closure.

The coming government should respect the HRDs right to manage their resources and not controlling or interfering with how they are going to deal with this matter. Especially in line with Art 13 of the human rights defenders declaration.

Access to fund provisions should be amended, HRDs and NGOs access to fund should not be restricted by the authorities approval, the state can no longer justify using such methods due to fighting against terrorism or money laundering especially with the existence of many national laws addressing such matters.

**For human rights defenders:**

HRDs needs to address and notify the UN relevant mechanisms in case a violation occurs, such as special rapporteurs and submit complaints to the Human Rights Council when necessary.

HRDs must develop arguments based on IHRL against the attacks on them and their work, matters like imposing restrictions and limitations on their existence and work should be faced by the proper arguments which put state against their international and regional legal obligations.

HRDs in Sudan should develop joint strategies to counter the state attempt to marginalise them or criminalise and restrict their work,

The use of available regional complaint mechanism and using such tool to makes Sudan fulfil its legal obligations; implementation is one of the weaknesses of such a method. However, this way should be used and address.

Advocacy and raising awareness about HRDs rights is an essential tool to gain support from citizens and to ensure some protection for HRDs and their work against the state power.

These are minor steps needed to be taken to achieve the full protection of HRDs in Sudan; still, a long and challenging way needs to cross in acquiring the recognition and acknowledgement of the role of

Sudanese HRDs in the promotion and protection of human rights in Sudan. However, regardless of all the difficulties and obstacles the author truly believes in light of the new developments in Sudan that the coming years shall bring the change that Sudanese HRDs are aiming to achieve. A new country with a democratic government where the role of law is well established and where human rights and fundamental freedoms are respected, protected and fulfilled for all without discrimination.



**Conclusion:**

Freedom of association and the right to work of HRDs had globally be targeted and violated. Restriction on NGOs existence is increasing everywhere, limitations on HRDs and NGOs registration and access to the fund could be described as international trend from Russia to Azerbaijan and the horn of Africa. The volume and type of NGOs activities had been affected negatively due to the imposing and enactment of the restrictive laws and regulations. Sudan also is part of the states how restrict the HRDs freedom of association and right to work through imposing the Humanitarian Work Act and broad discretionary powers and authorities to the State and NISS officials.

HRDs are facing challenging situations in Sudan, especially with the increased attacks against them after the ICC arrest warrant against the former president El-Bashir. Although the constitution states on the respect, protect and fulfil of all the rights and freedoms provided under international treaties which Sudan had ratified, many of these international and regional treaties explicitly recognised the freedom of association and right to work of the HRDs. Often the legislations neglect that Sudan bears such legal obligation, and impose restrictions on the rights and freedoms such limitations as the paper reflect are not in line with the international standers.

Registration under the Sudanese laws is a challenging process which NGOs must go through; it requires many steps and documents which might be challenging to obtain. The final decision whether to be granted registration certificate or not is mainly under HAC and the registrar authorities whom they could deny the registration, refuse to renew the NGOs registration or cancel NGO registration and remove them from the formal state register, such incidents occur regularly and Sudan and faced by many HRDs and NGOs.

As such access to fund is entirely on the state hands, the state can decide which NGO could have such access and which are forbidden from having any chance to get funds. By approving funds based on the NGOs projects State also can restrict the fields and sectors which HRDs could work in and the ones that HRDs are banned from engaged in, such control is a clear violation of the freedom of association and the right to work of HRDs.

In this regard, and as per the issues that the paper addressed, and considering the international legal analysis and framework, this paper concludes that Sudan had failed to comply with its international and regional legal obligations concerning the respect, protect and fulfil of the freedom of association and HRDs right to work. But yet Sudan has a great chance to address this gap between the international

obligations and its domestic laws. The country is witnessing now an opportunity to the democratic civilian government; a new constitutional declaration has been agreed upon; the role of HRDs is vital in this era of the Sudanese history. A chance is opening to strengthen civil society, and to upholding the rule of law and human rights, many recommendations could be provided in this regard, and there is an enormous hope that such recommendations going to be considered and reflected in the new constitution and national regulations.

## **Bibliography:**

### **Legal instruments:**

1. Universal Declaration of Human Rights, adopted 10 December 1948, UNGA Res 217 A (III).
2. International Covenant on Civil and Political Rights, ICCPR, adopted 16 December 1966, UN Treaty Series, vol. 999.
3. International Covenant on Economic, Social and Cultural Rights, ICESCR, adopted 16 December 1966, UN Treaty Series, vol. 993.
4. International Labour Organization, Freedom of Association and Protection of the Right to Organize Convention, No. 87.
5. Council of Europe, European Convention for the Protection of Human Rights and Fundamental Freedoms, as amended by Protocols Nos. 11 and 14, 4 November 1950, Council of Europe, ETS 5.
6. American Convention on Human Rights, "Pact of San Jose", Costa Rica, 22 November 1969, Organization of American States (OAS).
7. African Charter on Human and Peoples' Rights ("Banjul Charter"), 27 June 1981, Organization of African Unity (OAU) CAB/LEG/67/3 rev. 5, 21 I.L.M. 58 (1982).
8. Declaration on the Elimination of All Forms of Intolerance and of Discrimination Based on Religion or Belief, 25 November 1981, UNGA, A/RES/36/55.
9. The Interim National Constitution of the Republic of Sudan, adopted 2005.
10. Regulating the Voluntary and Humanitarian Work Act, adopted 2006.
11. National Commission on Human Rights Act, adopted 2009.
12. Press and Publication Act, adopted 2009.
13. National Intelligence Services Act, adopted 2010.

### **Jurisprudence:**

1. Monim Elgak, Osman Hummeida and Amir Suliman v Sudan, African Commission on Human and Peoples' Rights, 379/09.
2. Institute for Human Rights and Development in Africa (on behalf of Esmaila Connateh & 13 others) v. Angola, African Commission on Human and Peoples' Rights, May 2008, 292/04.
3. Law Office of Ghazi Suleiman (on behalf of Ghazi Suleiman) v Sudan, Merits, African Commission on Human and Peoples' Rights Communication no 228/99.

4. Sidiropoulos & Others v. Greece, 1998-IV Eur. Ct. H.R.
5. Katsora and ors v Belarus, Human Rights Committee Merits, UN Doc CCPR/C/100/D/1383/2005.
6. Boris Zvozkov and ors v Belarus, Human Rights Committee Merits, UN Doc CCPR/C/88/D/1039/2001, (2007).
7. Lawless v. Ireland [Lawless Commission] 1 Eur. Ct. H.R. (ser. B) at 82, § 90 (1960-961).
8. Viktor Korneenko et al v. Belarus, Human Rights Committee, Communication No. 1274/2004.

**Other international materials:**

1. Declaration on the Right and Responsibility of Individuals, Groups and Organs of Society to Promote and Protect Universally Recognized Human Rights and Fundamental Freedoms : resolution / adopted by the General Assembly, 8 March 1999, UNGA A/RES/53/144.
2. ICESCR, Social and Cultural Rights Council, General Comment No. 18: The Right to Work, 6 February 2006.
3. Charter of the United Nations, 24 October 1945, UN 1 UNTS XVI.
4. Grand Bay (Mauritius) Declaration and Plan of Action, OAU Ministerial Conference on Human Rights, April 1999.
5. Kigali Declaration, AU Ministerial Conference on Human Rights, May 2003.
6. Resolution on the situation of human rights defenders in Africa; African Commission on Human and People's Rights, ACHPR (XXXXI) 06.
7. Resolution on the protection of human rights defenders in Africa, African Commission on Human and People's Rights, ACHPR /Res.69 (XXXV) 04.
8. UN Human Rights Committee (HRC), General comment no. 31 [80], The nature of the general legal obligation imposed on States Parties to the Covenant, 26 May 2004, CCPR/C/21/Rev.1/Add.13.
9. UN Human Rights Committee (HRC), CCPR General Comment No. 29: Article 4: Derogations during a State of Emergency, 31 August 2001, CCPR/C/21/Rev.1/Add.11.
10. Sekaggya M, Commentary to the Declaration on the Right and Responsibility of Individuals, Groups and Organs of Society to Promote and Protect Universally Recognized Human Rights and Fundamental Freedoms, 2011.

11. Observatory for the Protection of Human Rights Defenders, Violations of the right of NGOs to funding: from harassment to criminalization (2013), Special Rapporteur on the Rights and Freedoms of Peaceful Assembly and of Association.
12. Human Rights Council, Report of the Special Rapporteur on the rights to freedom of peaceful assembly and of association, UNGA A/HRC/23/39, (2013).
13. Applying the Declaration on human rights defenders. Meeting the standards of the right to association, UNGA A/59/401.
14. Resolution on the Situation of Human Rights Defenders in Africa, African Commission on Human and People's Rights, ACHPR/Res. 376 (LX) 2017.
15. Report on the Implementation of the Mandate of the Special Rapporteur on the Human Rights Defenders in Africa, African Commission on Human and People's Rights.
16. UN Human Rights Committee (HRC), *ICCPR General Comment No. 27: Article 12 (Freedom of Movement)*, 2 November 1999, CCPR/C/21/Rev.1/Add.9.
17. Human Rights Council, Report of the Special Rapporteur on the Rights to Freedom of Peacefully Assembly and of Association, (2012), UNGA A/HRC/20/27.
18. Report of the Special Rapporteur on the situation of human rights defenders, (2009), UNGA A/64/226.
19. Resolution on the Right to Freedom of Association, ACHPR, Res.5 (XI) 92.
20. Resolution on the Integration of the Provisions of the African Charter on Human and Peoples' Rights into National Laws of States, ACHPR, Res. 3(V) 89.

**Books and academic articles:**

1. Bennett K, Ingleton D, Nah A & Savage J, Critical perspectives on the security and protection of human rights defenders, *The International Journal of Human Rights*, 2015, 19:7, 883-895, DOI: 10.1080/13642987.2015.1075301.
2. Posner H M and Whittome C, The Status of Human Rights NGOS, 1994, 25 *COLUM HUM RTS L REV* 269.
3. De Velde J V, The Foreign Agent Problem: an International Legal Solution to Domestic Restrictions on Non-Governmental Organizations, 2018, 40 *CARDOZO L. REV.* 687, 748.
4. Roth K, The Abusers' Reaction: Intensifying Attacks on Human Rights Defenders, Organizations, and Institutions, 2010, 16 *BROWN J. WORLD AFF.* 15.

5. Masabo C, Discerning for Peace in Africa: The Sudan Civil Wars and Peace Processes 1955-2013, peace studies and international relations, Hekima Review, No. 49, December 2013.
6. Medani A M, Criminal Law and Justice in Sudan, (2010).
7. Sluiter G, Using the Genocide Convention to Strengthen Cooperation with the ICC in the Al Bashir Case, Journal of International Criminal Justice, Volume 8, Issue 2, May 2010.
8. Carvalho S, De Marchi A, De Souza P & Mendonca Dias R, Protection Policies for Human Rights Defenders, 2016, 23 SUR - INT'L J. ON HUM RTS. 175.
9. Bennett K, European Union Guidelines on Human Rights Defenders: a review of policy and practice towards effective implementation, The International Journal of Human Rights, 2015, 19:7, 908-934, DOI: 10.1080/13642987.2015.1075303.
10. Neto U T, Protecting Human Rights Defenders in Latin America A Legal and Socio-Political Analysis of Brazil, Governance, Development, and Social Inclusion in Latin America, International Studies Instituto Mora Mexcio City, Mexico, 2018.
11. Criddle E J and Fox-Decent E, Human Rights, Emergencies, and the Rule of Law, Human Rights Quarterly 34 (2012) 39-87 © 2012 by The Johns Hopkins University Press.
12. Gershman C & Allen M, New Threats to Freedom: The Assault on Democracy Assistance, 2006, Journal of Democracy 36-51.
13. Nah A, Bennett K, Ingleton D and Savage J, A Research Agenda for the Protection of Human Rights Defenders, Journal of Human Rights Practice Vol. 5, Number 3, 2013, Oxford University Press.
14. Hannum H, The UDHR in National and International Law, Health and Human Rights, Vol. 3, No. 2, Fiftieth Anniversary of the Universal Declaration of Human Rights, 1998.

**NGOs reports:**

1. Shrinking Civil Society Space in the Horn of Africa, Horn of Africa Civil Society Organizations, PAX and Al Khatim Adlan Center for Enlightenment and Human Development, August 2017.
2. Sudan events of 2016 (*World Report 2017*, January 2017), Human Rights Watch.
3. Good Girls Don't Protest, Repression and Abuse of Women Human Rights Defenders, Activists, and Protesters in Sudan, Human Rights Watch March 2016.
4. "It's an Everyday Battle" Censorship and Harassment of Journalist and Human Rights Defenders in Sudan, Human Rights Watch, February 2009.

5. Sudan Report 2017/2018, Amnesty International.
6. Situation of Female Human Rights Defenders in Sudan, African Center for Justice and Peace Studies, February 2018.
7. Sudan Events of 2015, World Report 2016, Human Right Watch.

**Electronic resources:**

1. Sudan population, World Population Review 2019, <http://worldpopulationreview.com/countries/sudan-population/>.
2. South Sudan population, World Population Review 2019, <http://worldpopulationreview.com/countries/south-sudan-population/>.
3. BBC News, <https://www.bbc.co.uk/news/world-africa-47852496>.
4. <https://www.africanstand.com/news/africa/east-africa/sudan-military-commission-reactivates-trade-unions/>, accessed 15 August 2019.
5. [https://tbinternet.ohchr.org/\\_layouts/15/TreatyBodyExternal/Treaty.aspx?CountryID=165&Lang=EN](https://tbinternet.ohchr.org/_layouts/15/TreatyBodyExternal/Treaty.aspx?CountryID=165&Lang=EN)
6. Al-Tageer Newspaper, <https://www.altaghyeer.info/ar/2014/03/10/%D9%81%D9%87%D9%8A%D9%85%D8%A9-%D9%87%D8%A7%D8%B4%D9%85-%D9%85%D8%AF%D9%8A%D8%B1%D8%A9-%D9%85%D8%B1%D9%83%D8%B2-%D8%B3%D8%A7%D9%84%D9%85%D8%A9%D9%85%D9%86%D8%B9-%D8%A7%D9%84%D8%A7%D8%AD%D8%AA%D9%81/>
7. Relief web, <https://reliefweb.int/report/sudan/arab-coalition-sudan-condemns-closure-womens-centre>.
8. <https://sudouk.org/updates/posts/joint-ngo-letter-open-letter-to-un-special-procedure-holders-concerning-tracks-in-sudan/>.
9. Sudan Tribune newspaper, <http://www.sudantribune.com/spip.php?article45085>.
10. UN Human Rights office of the High Commissioner, <https://www.ohchr.org/EN/Issues/SRHRDefenders/Pages/Declaration.aspx>.
11. UN Human Rights Office of the High Commissioner, <http://indicators.ohchr.org/>.
12. African Commission on Human and People's Rights, Ratification Table of the African Charter on Human and People's Rights, <https://www.achpr.org/ratificationtable?id=49>.

13. <https://www.altaghyeer.info/ar/2017/06/03/%D9%85%D9%86%D8%B8%D9%85%D8%A7%D8%AA-%D8%A7%D9%84%D9%85%D8%AC%D8%AA%D9%85%D8%B9-%D8%A7%D9%84%D9%85%D8%AF%D9%86%D9%8A-%D8%AA%D8%AF%D8%B9%D9%88-%D9%84%D9%85%D9%82%D8%A7%D9%88%D9%85%D8%A9-%D9%82%D8%A7/>.
14. <http://sudantribune.com/spip.php?article67883>.